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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

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

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

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

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the **Federal Register**,
 First Floor Conference Room,
 1100 L Street NW, Washington, DC.

RESERVATIONS: 202-523-5240.

DIRECTIONS: North on 11th Street from
 Metro Center to southwest
 corner of 11th and L Streets

Contents

Agriculture Department

See Animal and Plant Health Inspection Service; Cooperative State Research Service; Federal Crop Insurance Corporation; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

Community partnership study program; drug use and alcohol abuse prevention demonstration program; correction, 58122

Animal and Plant Health Inspection Service

PROPOSED RULES

Animal welfare:

Dogs and cats—

Pounds and shelters, private entities, and research facilities; pre-sale care and treatment requirements, etc., 57991

NOTICES

Meetings:

National Animal Damage Control Advisory Committee, 58030

Army Department

See Engineers Corps

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

Bonneville Power Administration

NOTICES

Environmental statements; availability, etc.:

Puget Sound Power & Light Co., 58053

Centers for Disease Control

NOTICES

Grants and cooperative agreements; availability, etc.:

Hepatitis B core and surface antigens, antibodies detection; enzyme immunoassay technologies, 58058

Human immunodeficiency virus infection and expanded AIDS surveillance case definition for adolescents and adults; revised classification system; document availability, 58059

Meetings:

Energy-Related Epidemiologic Research Workshop, 58059
Hanford Thyroid Morbidity Study Advisory Committee, 58059

Tuberculosis Elimination Advisory Council, 58059

Children and Families Administration

NOTICES

Meetings:

Job Opportunities and Basic Skills Training Program Evaluation Advisory Panel, 58060

President's Committee on Mental Retardation, 58060

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

Commerce Department

See Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped

NOTICES

Procurement list; additions and deletions, 58050, 58051 (3 documents)

Cooperative State Research Service

RULES

Special research grants program; administrative provision, 58146

Defense Department

See also Engineers Corps; Navy Department

RULES

Privacy Act; implementation

Financial privacy rights; CFR Part redesignated, 57984

Education Department

NOTICES

Agency information collection activities under OMB review, 58052

Grants and cooperative agreements; availability, etc.:

Experimental and innovative training program; correction, 58053

Employment and Training Administration

NOTICES

Adjustment assistance:

Akerman, Inc., et al., 58091

General Electric Co., 58092

Owens-Brockway, Inc., 58092

SESA Fluorspar, Inc.; correction, 58122

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 58092

Energy Department

See also Bonneville Power Administration; Federal Energy Regulatory Commission

NOTICES

Grant and cooperative agreement awards:

Stanford University; correction, 58122

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

Compton Creek and Shoal Harbor, Belford, NJ; navigational project, 58051

Environmental Protection Agency**RULES**

Air programs; fuel and fuel additives:

Reformulated gasoline standards—

Massachusetts and Pennsylvania, 57986

NOTICES

Environmental statements; availability, etc.:

Agency statements—

Comment availability, 58056

Weekly receipts, 58057

Sand Mountain-Lake Guntersville, Alabama Surface and
Ground Water Project, 58057**Executive Office of the President***See Presidential Documents***Federal Aviation Administration****RULES**

Airport radar service areas, 57971

VOR Federal airways, 57972

VOR Federal airways and jet routes, 57973

PROPOSED RULES

Airworthiness directives:

Air Tractor Inc., 57994

Beech, 57996

Boeing, 57997, 58002

(3 documents)

NOTICES

Meetings:

Aviation Rulemaking Advisory Committee, 58113

Federal Bureau of Investigation**NOTICES**

Meetings:

National Crime Information Center Advisory Policy
Board, 58090**Federal Communications Commission****RULES**

Radio services, special:

Maritime services—

Hand-held marine VHF transmitters; interference
reduction, 57987**Federal Crop Insurance Corporation****RULES**

Crop insurance; various commodities:

Peppers, 57971

Walnuts, 57971

Federal Deposit Insurance Corporation**NOTICES**

Meetings; Sunshine Act, 58120

Federal Emergency Management Agency**PROPOSED RULES**

Federal crime insurance program:

Commercial properties rates removed, 58019

Federal Energy Regulatory Commission**NOTICES**Electric rate, small power production, and interlocking
directorate filings, etc.:

Duke Power Co. et al., 58054

Federal Maritime Commission**NOTICES**

Agreements filed, etc., 58058

Meetings; Sunshine Act, 58120

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:

Kanab ambersnail, 58020

Lee County cave isopod, 58026

NOTICES

Environmental statements; availability, etc.:

Southwestern San Diego County, CA; least Bell's vireo
and coastal California gnatcatcher, incidental taking,
58083**Food and Drug Administration****NOTICES**

Human drugs:

New drug applications—

Par Pharmaceutical, Inc.; approval withdrawn, 58060

Premarket applications:

Fraud, untrue statements of material facts, bribery, and
illegal gratuities; final policy; correction, 58122**Foreign-Trade Zones Board****NOTICES***Applications, hearings, determinations, etc.:*

Connecticut, 58030

Forest Service**NOTICES**Recreation residence authorizations; policy; correction,
58122**Health and Human Services Department***See Alcohol, Drug Abuse, and Mental Health*Administration; Centers for Disease Control; Children
and Families Administration; Food and Drug
Administration; Health Care Financing Administration;
Health Resources and Services Administration;
National Institutes of Health**Health Care Financing Administration****NOTICES**

Medicare:

Inpatient hospital deductible and hospital and skilled
nursing facility coinsurance amounts—

1992 CY, 58061

Monthly actuarial rates and supplementary medical
insurance premium rates (1992 CY), 58062Monthly hospital insurance premium (Part A premium) for
uninsured aged, etc.; 1992 CY, 58067**Health Resources and Services Administration****NOTICES**

Grants and cooperative agreements; availability, etc.:

Professional nurse traineeships program, 58068

Housing and Urban Development Department**PROPOSED RULES**

Mortgage and loan insurance programs:

Housing counseling program, 58158

NOTICESAgency information collection activities under OMB review,
58070, 58072

(3 documents)

Grants and cooperative agreements; availability, etc.:

Facilities to assist homeless—

Excess and surplus Federal property, 58072

Indian Affairs Bureau**NOTICES**

Grants and cooperative agreements; availability, etc.:
Special tribal court program, 58154

Interior Department

See also Fish and Wildlife Service; Indian Affairs Bureau;
Land Management Bureau; National Park Service;
Surface Mining Reclamation and Enforcement Office

NOTICES

Agency information collection activities under OMB review,
58083

Internal Revenue Service**RULES**

Income taxes:

Business cash transactions in excess of \$10,000;
treatment, 57974

PROPOSED RULES

Income taxes:

Policy acquisition expenses; capitalization
Hearing, 58003

Policy acquisition expenses; capitalization, 58003

International Trade Administration**NOTICES**

Antidumping:

3.5 inch microdisks and coated media from Japan, 58040
Granular polytetrafluoroethylene resin from Italy, 58031
Portable electric typewriters from Japan, 58031

Applications, hearings, determinations, etc.:

Children's Hospital of Michigan, 58048

University of—

Rochester et al., 58048

Interstate Commerce Commission**NOTICES**

Agreements under sections 5a and 5b; applications for
approval, etc.:

Rocky Mountain Motor Tariff Bureau Inc., 58090

Justice Department

See Federal Bureau of Investigation

Labor Department

See also Employment and Training Administration;
Employment Standards Administration; Mine Safety
and Health Administration

NOTICES

Agency information collection activities under OMB review,
58091

Land Management Bureau**RULES**

Public land orders:

Idaho; correction, 58122

NOTICES

Alaska Native claims selection:

Klawock-Heenya Corp., 58084

Environmental statements; availability, etc.:

Big Piney-LaBarge coordinated activity plan, WY, 58085

Meetings:

Carson City District Advisory Council, 58085

Opening of public lands:

New Mexico, 58085

Realty actions; sales, leases, etc.:

California, 58086

Colorado, 58086

Montana, 58086

Nevada, 58087

Resource management plans, etc.:

Albuquerque District, NM, 58088

Snettisham Power Project, AK (Public land order 5108;

survey conformance, legal description, 58088

Withdrawal and reservation of lands:

Alaska, 58089

California; correction, 58122

Oregon; correction, 58122

Mine Safety and Health Administration**NOTICES**

Safety standard petitions:

Sunnyside Coal Co. et al., 58094

Minority Business Development Agency**NOTICES**

Business development center program applications:

Tennessee, 58049

National Foundation on the Arts and the Humanities**NOTICES**

Meetings:

Inter-Arts Advisory Panel, 58095

Opera-Musical Theater Advisory Panel, 58095

Public Partnership Office Advisory Panel, 58095

National Highway Traffic Safety Administration**RULES**

Consumer information:

Uniform tire quality grading standards—

Vehicles in treadwear convoys, 57988

PROPOSED RULES

Fuel economy standards:

Light trucks

Correction, 58020

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Institutes of Health**NOTICES**

Meetings:

Advisory Committee to Director, 58069

National Eye Institute, 58069

National Heart, Lung, and Blood Institute, 58069, 58070

(3 documents)

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:

Gulf of Alaska groundfish, 57989

PROPOSED RULES

Fishery conservation and management:

Western Pacific crustacean, 58029

NOTICES

Fishery management councils; hearings:

South Atlantic—

Shrimp, 58050

National Park Service**NOTICES**

National Register of Historic Places:

Pending nominations, 58089

National Science Foundation**NOTICES****Meetings:**

Astronomical Sciences Advisory Committee; correction, 58123

Instrumentation and Instrument Development Advisory Panel, 58096

Political Science Advisory Panel, 58096

Teacher Preparation and Enhancement Special Emphasis Panel, 58096
(2 documents)

Navy Department**NOTICES**

Patent licenses; non-exclusive, exclusive, or partially exclusive:

Drug Screening Systems, Inc., 58052

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:

Alabama Power Co., 58096

Pension Benefit Guaranty Corporation**RULES****Single-employer plans:**

Failure to make required contributions; lien, 57977

Sufficient plans; notice of intent to terminate; requirement to inform plan participants of legal effect, 57980

Valuation of plan benefits and plan assets following mass withdrawal—

Interest rates, 57983

PROPOSED RULES**Single-employer plans:**

Annuity providers for terminating pension plans; selection, 58014

NOTICES

Agency information collection activities under OMB review, 58099

Personnel Management Office**NOTICES****Excepted service:**

Schedules A, B, and C; positions placed or revoked—
Update, 58097

Postal Service**RULES****Freedom of Information Act; implementation:**

Computer records retrieval fees, 57984

Presidential Documents**Administrative Orders**

Chemical and biological weapons; continuation of export control regulations (Notice of November 14, 1991), 58169

PROCLAMATIONS**Special observances:**

Red Ribbon Month, National (Proc. 6374), 57969

Public Health Service

See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health

Research and Special Programs Administration**NOTICES****Hazardous materials:**

Inconsistency rulings, etc.—
New York City, NY, 58126

Resolution Trust Corporation**NOTICES**

Meetings; Sunshine Act, 58120

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 58105

Philadelphia Stock Exchange, Inc., 58109

Self-regulatory organizations; unlisted trading privileges:

Midwest Stock Exchange, Inc., 58104

Pacific Stock Exchange, Inc., 58108

Applications, hearings, determinations, etc.:

Freedom Investment Trust; correction, 58112

Smith Barney L.P. ESC-1 et al.; correction, 58112

State Department**NOTICES****Meetings:**

International Telecommunications Union Regional Development Conference for the Americas, 58112

Surface Mining Reclamation and Enforcement Office**PROPOSED RULES**

Permanent program and abandoned mine land reclamation plan submissions:

Kansas, 58018

Trade Representative, Office of United States**NOTICES**

United States-Canada Free-Trade Agreement:

Accelerated tariff elimination provision implementation, 58117

Transportation Department

See also Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

NOTICES**Aviation proceedings:**

Hearings, etc.—

Air Alpha, Inc., 58112

Treasury Department

See also Internal Revenue Service

NOTICES

Agency information collection activities under OMB review, 58117

United States Information Agency**NOTICES**

Grants and cooperative agreements; availability, etc.:

American overseas research centers, 58113

Public and private non-profit organizations in support of international educational and cultural activities, 58114

United States Institute of Peace**NOTICES**

Meetings; Sunshine Act, 58121

Veterans Affairs Department**RULES**

Adjudication; pensions, compensation, dependency, etc.:
 Persian Gulf War veterans; nonservice-connected pension
 benefits, 57985

Disabilities rating schedule:
 Total disability; pension based on unemployability and
 age of individual, 57985

Separate Parts In This Issue**Part II**

Department of Transportation, Research and Special
 Programs Administration, 58126

Part III

Department of Agriculture, Cooperative State Research
 Service, 58146

Part IV

Department of the Interior, Bureau of Indian Affairs, 58154

Part V

Department of Housing and Urban Development, 58158

Part VI

The President, 58169

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.

3 CFR

Proclamations:
 6374.....57969
 12735 (Continued
 by Notice of
 November 14,
 1991).....58171

Administrative Orders:

Notices:
 November 14, 1991.....57969

7 CFR

445.....57971
 446.....57971
 3400.....58146

9 CFR

Proposed Rules:
 1.....57991
 2.....57991

14 CFR

71 (3 documents).....57971,
 57973
 75.....57973

Proposed Rules:

39 (5 documents).....57994,
 58002

24 CFR

Proposed Rules:
 214.....58158

26 CFR

1.....57974

Proposed Rules:

1 (2 documents).....58003

29 CFR

2615.....57977
 2617.....57980
 2676.....57983

Proposed Rules:

2617.....58014

30 CFR

Proposed Rules:
 916.....58018

32 CFR

275.....57984
 294.....57984

38 CFR

3.....57985
 4.....57985

39 CFR

265.....57984

40 CFR

80.....57986

43 CFR

6890.....58122

44 CFR

Proposed Rules:

83.....58019

47 CFR

80.....57987

49 CFR

575.....57988

Proposed Rules:

533.....58020

50 CFR

672.....57989

Proposed Rules:

17 (2 documents).....58020,

58026

681.....58029

Presidential Documents

Title 3—

Proclamation 6374 of November 13, 1991

The President

National Red Ribbon Month, 1991

By the President of the United States of America

A Proclamation

During the month of November, we Americans pause to count our many blessings—including the love of family and friends, the joy of freedom and security, and, of course, the gift of life itself. Thus, the holiday season that traditionally begins on Thanksgiving is a very special time of celebration and renewal.

Tragically, however, this time of peace and joy will become a time of mourning for far too many American families as a result of alcohol-related traffic accidents. Countless hopes and dreams will be destroyed this holiday season when drinking turns deadly behind the wheel.

Drunk driving often makes headlines during the holidays, but we must remember that this scourge is a year-round public health problem. Indeed, the Department of Transportation reports that traffic accidents remain the single leading cause of death for Americans between the ages of 5 and 32, and that almost half of these fatalities involve alcohol. In 1990 alone, more than 22,000 people died in alcohol-related motor vehicle accidents—an average of one person every 24 minutes. Each year, another 345,000 persons are injured in drunk driving incidents.

The toll that alcohol-related accidents takes on Americans between the ages of 16 and 20 is especially alarming. Although in most States it is illegal for minors to purchase alcoholic beverages in any form, nearly half of all traffic fatalities in this age group stem from alcohol-related accidents. In 1990 alone, the lives of some 3,361 young men and women—potential scientists, physicians, teachers, and parents—were violently cut short.

The news is not all bad, however. In recent years, we have made encouraging progress in our efforts to stop drunk and drugged driving. According to the National Highway Traffic Safety Administration (NHTSA), alcohol-related fatalities among all adults have declined approximately 13 percent since 1982. The NHTSA also reports that, since 1984, when the Congress called on all States to raise their minimum legal drinking age to 21, alcohol-related deaths among youth have likewise dropped. Indeed, the law has saved the lives of about 1,000 young Americans between the ages of 16 and 20 every year.

This progress has been made possible by a combination of tougher laws at the Federal, State, and local levels and by concerted public awareness campaigns in both the public and private sectors. Nevertheless, we still have much work to do. Accordingly, our National Health Objectives for the year 2000 include targets for reducing the number of alcohol-related motor vehicle fatalities. We remain firmly resolved to reduce underage drinking, and we will continue to seek both the enactment and the enforcement of tougher laws against driving under the influence of alcohol or drugs.

Millions of concerned individuals across the United States have rallied in support of these and other measures against drunk driving. This month, the 3,000,000 members of Mothers Against Drunk Driving (MADD) will launch a major public awareness campaign by asking Americans to "Tie One on for Safety" during the upcoming holiday season. Members of MADD will distribute more than 90,000,000 red ribbons nationwide to remind all those who might get behind the wheel to think before they drink.

To help heighten public awareness of the dangers of drinking and driving, the Congress, by Senate Joint Resolution 188, has designated November 1991 as "National Red Ribbon Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 1991 as National Red Ribbon Month. I urge all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-27725]

Filed 11-13-91; 4:21 pm]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 56, No. 221

Friday, November 15, 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.

The **Code of Federal Regulations** is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 445

[Doc. No. 0287s]

Pepper Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend Sunset Review date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to extend the sunset review date for the Pepper Crop Insurance Regulations (7 CFR part 445). The intended effect of this notice is to reestablish the sunset review date of these regulations following a review in accordance with the provisions of Departmental Regulation 1512-1 to determine the need, currency, clarity, and effectiveness of these regulations under those procedures.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1995.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on October 31, 1991.

James E. Cason,
Manager, Federal Crop Insurance Program.
[FR Doc. 91-27435 Filed 11-14-91; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 446

[Docket No. 0286s]

Walnut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend Sunset Review date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to extend the sunset review date for the Walnut Crop Insurance Regulations (7 CFR part 446). The intended effect of this notice is to reestablish the sunset review date of these regulations following a review in accordance with the provisions of Departmental Regulation 1512-1 to determine the need, currency, clarity, and effectiveness of these regulations under those procedures.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1996.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on October 31, 1991.

James E. Cason,
Manager, Federal Crop Insurance Program.
[FR Doc. 91-27436 Filed 11-14-91; 8:45 am]
BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AWA-7]

Amend Operating Hours for the Pensacola Naval Air Station Airport Radar Service Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the operating hours of the Pensacola Naval Air Station (NAS), FL, Airport Radar Service Area (ARSA). The Pensacola NAS has reduced its operating hours. This action makes the ARSA effective only during the operating hours of the NAS, which will be published by NOTAM and in the Airport/Facility Directory.

EFFECTIVE DATE: 0901 u.t.c., November 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the operating hours for the Pensacola NAS ARSA to coincide with the operating hours of the Pensacola NAS, which are from 0600 to 2400 local time, Monday through Friday, and from 0800 to 2200 local time on weekends and holidays. An ARSA is established based on the activity at the airport concerned. The degree of activity at the NAS relates directly to the field's operating hours, and does not warrant ARSA status when the field is closed. The Pensacola Air Traffic Control Tower will continue to provide approach control service for the area. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 71.501 of part 71 of

the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this 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 this rule 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, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Pensacola NAS, FL [Amended]

By adding the following to the end of the description: “The airport radar service area is effective during the specific days and hours of operation of the Pensacola NAS as established in advance by a Notice to Airmen. The effective dates and times will thereafter be published in the Airport/Facility Directory.”

Issued in Washington, DC, on November 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-27472 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-21]

Alteration of VOR Federal Airways; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal airways located in the State of Michigan. This action will realign a segment of V-26 and V-133 in the vicinity of Detroit, MI. This action is necessary to align several intersections to coincide with the standard terminal arrival routings and approach procedures to the Detroit Metropolitan Wayne County Airport.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT:

Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On February 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-26 and V-133 located in the State of Michigan (56 FR 5377). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of V-26 and V-133 located in the State of Michigan. Altering these airways will align several intersections to coincide with the standard terminal arrival routings and approach procedures to the Detroit Metropolitan Wayne County Airport. Realigning the airways will make better use of the navigational aids and airspace in the area.

The FAA has determined that this 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 this rule 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, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-26 [Amended]

By removing the words “INT Salem 140° and DRYER, OH, 305° radials;” and substituting the words, “Detroit, MI; INT Detroit 141° and DRYER, OH, 305° radials;”

V-133 [Amended]

By removing the words “INT Mansfield 349° and Salem, MI, 140° radials; Salem;” and substituting the words, “INT Mansfield 349° and Detroit, MI 141° radials; Detroit; Salem, MI;”

Issued in Washington, DC, on November 6, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-27474 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 91-AWP-3]

Alteration of VOR Federal Airways and Jet Routes**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: These amendments alter the descriptions of the Federal airways and jet routes extending from the Salt River (SRP) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) located in Phoenix, AZ. The Salt River VORTAC has been relocated 4 miles west of its previous position. These amendments will alter the en route airway structure to coincide with that relocation. Additionally, the Salt River VORTAC will be renamed the Phoenix (PXR) VORTAC.

EFFECTIVE DATE: 0901 u.t.c. January 9, 1992.

FOR FURTHER INFORMATION CONTACT:

Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:**History**

On June 4, 1991, the FAA proposed to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to alter the descriptions of VOR Federal airways and jet routes located in Phoenix, AZ (56 FR 25382). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the inclusion of J-244, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The Rule

These amendments to parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of the VOR Federal airways and jet routes extending from the Salt River VORTAC located in Phoenix, AZ. The Salt River VORTAC has been relocated 4 miles west of its previous position. Additionally, the Salt River VORTAC will be renamed the Phoenix VORTAC. On December 11,

1989, the FAA published in the Federal Register the final rule on the Phoenix Terminal Control Area with an effective date of January 11, 1990 (54 FR 50982). During the rulemaking process many commenters suggested that the FAA establish a VOR on the airport at Phoenix. The FAA agreed and during June 1989, the FAA identified an acceptable site 1.8 nautical miles (NM) east of Phoenix Sky Harbor Airport; the Salt River VORTAC has now been relocated to this site. Congruent with this relocation the Salt River VORTAC will be renamed the Phoenix VORTAC. This action alters the en route airway structure to coincide with this relocation. Jet Route J-244 was amended on May 30, 1991, between Las Vegas, NM, and Salt River, AZ (56 FR 26326). Although this jet route was not initially included in the NPRM, this action will also amend J-244.

The FAA has determined that this 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 this rule 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 Parts 71 and 75

Aviation safety, VOR Federal airways and Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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; 49 CFR 1.47.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-16 [Amended]

By removing the words "Salt River, AZ; INT Salt River 161° and Stanfield, AZ, 105° radials;" and substituting the words "Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials;"

V-95 [Amended]

By removing the words "From Gila Bend, AZ, via INT Gila Bend 096° and Salt River, AZ, 204° radials; Salt River;" and substituting the words "From Gila Bend, AZ, via INT Gila Bend 096° and Phoenix, AZ, 197° radials; Phoenix;"

V-105, V-190 and V-257 [Amended]

By removing the words "Salt River, AZ" and substituting the words "Phoenix, AZ"

V-327 [Revised]

From Phoenix, AZ; INT Phoenix 011° and Flagstaff, AZ, 186° radials; Flagstaff.

V-528 [Revised]

From Phoenix, AZ; INT Phoenix 046° and St. Johns, AZ, 269° radials; St. Johns.

V-562 [Amended]

By removing the words "From Salt River, AZ; via INT Salt River 006° and Drake, AZ, 131° radials;" and substituting the words "From Phoenix, AZ; via INT Phoenix 011° and Drake, AZ, 131° radials;"

V-567 [Revised]

From Phoenix, AZ; via INT Phoenix 011° and Winslow, AZ, 224° radials; 52 miles, 95 MSL; to Winslow.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for part 75 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; 49 CFR 1.47.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-11 [Revised]

From Tucson, AZ, via INT Tucson 320° and Phoenix, AZ, 155° radials; Phoenix; Drake, AZ; Bryce Canyon, UT; Fairfield, UT; to Salt Lake City, UT.

J-18, J-44 and J-92 [Amended]

By removing the words "Salt River, AZ" and substituting the words "Phoenix, AZ"

J-19 [Amended]

By removing the words "From Salt River, AZ, via INT Salt River 051° and Zuni, AZ, 242° radials;" and substituting the words "From Phoenix, AZ, via INT Phoenix 052° and Zuni, NM, 242° radials;"

J-65 [Amended]

By removing the words "Salt River, AZ; INT Salt River 272° and Blythe, CA, 096° radials;" and substituting the words

"Phoenix, AZ; INT Phoenix 272° and Blythe, CA, 096° radials;"

J-102 [Amended]

By removing the words "From Salt River, AZ; INT Salt River 066° and Zuni, NM, 226° radials;" and substituting the words "From Phoenix, AZ; INT Phoenix 066° and Zuni, NM, 226° radials;"

J-244 [Amended]

By removing the words "INT Zuni 242° and Salt River, AZ, 051° radials; Salt River;" and substituting the words "INT Zuni 242° and Phoenix, AZ, 052° radials; Phoenix;"

Issued in Washington, DC, on November 5, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-27475 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8373]

RIN 1545-AP54

Returns Relating to Cash in Excess of \$10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that, under certain circumstances, treat specified monetary instruments as cash for purposes of the requirement under section 6050I of the Internal Revenue Code of 1986 to report cash in excess of \$10,000 received in a trade or business. The regulations are needed to implement changes to the applicable law made by the Revenue Reconciliation Act of 1990. The regulations affect persons that, under certain circumstances, receive, in the course of a trade or business in which they are engaged, specified monetary instruments that, together with any currency received, total more than \$10,000 in any one transaction (or two or more related transactions).

EFFECTIVE DATE: These regulations are effective for amounts received on or after February 3, 1992.

FOR FURTHER INFORMATION CONTACT:
Philip Scott, 202-566-3826 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:
Paperwork Reduction Act**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-0892. The estimated annual burden per respondent varies from 11 minutes to 27 minutes, depending upon individual circumstances, with an average of 19 minutes.

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

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On May 15, 1991, the *Federal Register* published a notice of proposed rulemaking (56 FR 22379) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 6050I of the Internal Revenue Code. These amendments were proposed to implement section 11318(a) of the Revenue Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388 (the "1990" Act).

Written comments responding to the notice were received. A public hearing was held on June 28, 1991, pursuant to a notice published in the *Federal Register* on May 15, 1991 (56 FR 22379). After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury Decision.

Explanation of Provisions

In General

Under section 6050I, any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of \$10,000 in one transaction (or two or more related transactions) must make an information return relating to the transaction. Any person required to make an information return under section 6050I must also

furnish a statement to any person identified on the return showing the aggregate amount of reportable cash received from that person. Financial institutions are generally excepted from the reporting requirements of section 6050I because, pursuant to regulations prescribed under section 5313 of title 31 of the United States Code (relating to reports on domestic coins and currency transactions), they are required to file similar reports on the receipt of more than \$10,000 in currency from a customer in one or more transactions in a business day.

Section 11318(a) of the 1990 Act amended section 6050I to provide that, to the extent provided in regulations, the term "cash" includes any monetary instrument, whether or not in bearer form, with a face amount of not more than \$10,000 (other than certain checks).

The final regulations, with limited exceptions, treat specified monetary instruments as cash when they are received in connection with designated reporting transactions, i.e., retail sales of consumer durables or collectibles or retail sales of a travel or entertainment activity. In addition, a specified monetary instrument is treated as cash in any transaction if the recipient of the instrument knows that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and the regulations thereunder. The Service will continue to monitor information reporting in trades and businesses generally, including real estate closings and settlements and transactions in the wholesale trade, to determine trends in noncompliance and abuse. If experience warrants, expanded reporting requirements may be proposed on a prospective basis.

*Changes Made by the Final Regulations
Specified Monetary Instruments*

The final regulations clarify that cashier's checks, by whatever name they are called (including "treasurer's check" and "bank check"), as well as bank drafts, traveler's checks, and money orders, are specified monetary instruments if they have a face amount of not more than \$10,000.

Designated Reporting Transactions

Under the proposed regulations, specified monetary instruments are treated as cash if they are received in a designated reporting transaction. A designated reporting transaction includes a retail sale of a consumer durable. The proposed regulations define a consumer durable as an item of tangible personal property of a type

normally sold for personal consumption or use that can reasonably be expected to be useful for at least one year under ordinary usage and that has a sales price of more than \$10,000.

In response to comments received, the final regulations clarify the definition of the term "consumer durable" to mean an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for a least one year under ordinary usage, and that has a sales price of more than \$10,000. Thus, under the final regulations, an item of tangible personal property that is suitable under ordinary usage for personal consumption or use may be a consumer durable whether or not in the experience of a particular merchant/recipient a larger quantity of the item is sold for business use or consumption than for personal use or consumption and whether or not in a particular sale the item is sold for personal use or consumption. For example, a \$20,000 automobile is a consumer durable even if the dealer sells a larger quantity of automobiles for business use than it sells for personal use and even if the automobile in a particular sale is sold for business use. Conversely, a dump truck is not a consumer durable.

Under the proposed regulations, a designated reporting transaction also includes the retail sale of a travel or entertainment activity. A travel or entertainment activity is one or more items of travel or entertainment pertaining to a single trip or event, but only if the aggregate sales price of all items pertaining to the trip or event exceeds \$10,000.

Some commentators suggested that a retail sale of a travel or entertainment activity should not be included as a designated reporting transaction. However, based on law enforcement experience, the retail sale of a travel and entertainment activity has been retained as a designated reporting transaction in the final regulations. In this connection, it should be noted that, as discussed below, the final regulations clarify the down payment plan exception to the designated reporting transaction rules so as to make the exception more readily applicable to items of travel and entertainment.

The final regulations clarify the definition of "retail sale" by providing that any sale (whether for resale or for any other purpose) that is made in the course of a trade or business that principally consists of making sales to ultimate consumers is a retail sale.

Exceptions for Loans and Periodic Payment Plans

The proposed regulations provide that a specified monetary instrument received in a designated reporting transaction is not treated as cash if one of the exceptions discussed below applies and the recipient does not know that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and the regulations.

The first exception applies if the monetary instrument constitutes the proceeds of a loan from a bank (including a thrift institution or a credit union). The merchant/recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation to substantiate that the instrument constitutes loan proceeds.

Commentators recommended that the final regulations should provide examples of documentation (other than a loan document or a written statement from the bank issuing the instrument) that would constitute sufficient substantiation. The proposed regulations contain such an example: Example 2 of § 1.6050I-1(c)(1)(vii). The final regulations expand the description of the documentary substantiation in example 2 and revise the text of § 1.6050I-1(c)(iv) to include as an example of sufficient substantiation a written lien instruction from the issuer of the monetary instrument.

The second exception applies if (1) the instrument is received in payment on a promissory note or an installment sales contract, (2) the recipient uses promissory notes or installment sales contracts with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and (3) the total amount of payments received with respect to the sale on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

One commentator suggested that the exception for payments received under installment sales contracts should also include payments on leases if the leasing of property is considered a designated reporting transaction. Under the proposed regulations, the leasing of property is not a designated reporting transaction unless, in a particular case, a transaction that is nominally a leasing transaction is considered to be a sale for Federal income tax purposes. See Rev. Rul. 55-540, 1955-2 C.B. 39. In such case, the transaction may be a designated reporting transaction. The final regulations clarify that the exception for

installment sales contracts is applicable in that case, provided the conditions contained therein are satisfied.

The third exception applies if (1) the instrument is received pursuant to a payment plan requiring one or more downpayments and the payment of the balance of the purchase price by the time of the sale, (2) the recipient uses plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and (3) the instrument is received more than 60 days prior to the date of the sale.

In response to a comment concerning the applicability of the third exception with respect to the sale of an item of travel or entertainment, the exception is clarified in the final regulations. In such case, the exception applies if (1) the instrument is received pursuant to a payment plan requiring one or more downpayments and the payment of the balance of the purchase price on or before the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished, (2) the recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and (3) the instrument is received more than 60 days prior to the date on which the final payment is due. Thus, for example, in the case of amounts received by a travel agency for airfare, accommodations, and admissions pertaining to a single trip, the third exception would apply to a specified monetary instrument received more than 60 days prior to the date by which the final payment is due, provided that the other conditions contained in the exception are met.

One commentator suggested that a further exception should be made to the designated reporting transaction rules in the case of a specified monetary instrument that is acquired with funds on deposit at a bank. No exception has been made in the final regulations for a monetary instrument so acquired because, in order to avoid abuse, it would be necessary to add considerable substantiation requirements that would impose an additional burden on issuers, payors, and recipients, as well as on the Service.

Recipient's Knowledge of Structuring

The proposed regulations provide that a specified monetary instrument is treated as cash if the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and the regulations thereunder.

One commentator suggested that the final regulations should state that reporting is required if the recipient has actual knowledge that the monetary instrument is being used in an attempt to avoid reporting. The Service believes, however, that "knowledge," rather than "actual knowledge," is the better term for this purpose because it has been more clearly defined through judicial interpretation in other contexts and thus should be easier to apply by taxpayers and the Service. *See, e.g., United States v. Jewell*, 532 F.2d 697 (9th Cir. 1976) (*en banc*), *cert. denied*, 426 U.S. 951 (1976), holding that the term "knowledge" comprehends "willful blindness," the deliberate avoidance of knowledge of the facts.

Another commentator recommended that a criminal defense attorney who knows that a specified monetary instrument received from a client is being used in an attempt to avoid the reporting of the transaction should be excepted from reporting where the attorney's knowledge is derived from communications with the client. The Service is concerned that such a regulatory exception, however limited in scope, would have the effect of encouraging the use of monetary instruments in lieu of currency to avoid the currency reporting rules. Therefore, no exception is provided in the final regulations.

Other Comments

Several commentators addressed matters which more closely pertain to existing regulations under section 6050I. Because these matters involve the interpretation of those regulations, they are not addressed in this document. The Service, however, is considering these comments in the context of its continuing review of the rules promulgated under section 6050I and will provide additional guidance where necessary or appropriate.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of 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.

List of Subjects

26 CFR 1.6031-1 through 1.6060-1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.6050I-1 also issued under 26 U.S.C. 6050I. * * *

Par. 2. Section 1.6050I-1 is amended as follows:

1. Paragraph (c)(1) is revised.
2. Paragraphs (c)(2) through (c)(4) are redesignated as paragraphs (c)(6) through (c)(8), respectively, and paragraph headings are added.
3. New paragraphs (c)(2) through (c)(5) are added.
4. Paragraph (g) is revised.
5. The revised and added provisions read as follows:

§ 1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.

* * * * *

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Cash*—(i) *Amounts received prior to February 3, 1992.* For amounts received prior to February 3, 1992, the term *cash* means the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued.

(ii) *Amounts received on or after February 3, 1992.* For amounts received on or after February 3, 1992, the term *cash* means—

(A) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(B) A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than \$10,000—

(1) Received in a designated reporting transaction as defined in paragraph (c)(1)(iii) of this section (except as

provided in paragraphs (c)(1)(iv), (v), and (vi) of this section), or

(2) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and this section.

(iii) *Designated reporting transaction.*

A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

- (A) A consumer durable,
- (B) A collectible, or
- (C) A travel or entertainment activity.

(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR part 103). The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(v) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(A) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(B) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(vi) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel

or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(A) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(B) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(vii) *Examples.* The following examples illustrate the definition of "cash" set forth in paragraphs (c)(1)(ii) through (vi) of this section.

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for \$13,200. D tenders to M in payment United States currency in the amount of \$6,200 and a cashier's check in the face amount of \$7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as cash for purposes of section 6050I and this section. Therefore, because M has received more than \$10,000 in cash with respect to the transaction, M must make the report required by section 6050I and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for \$11,500. E tenders to Q in payment United States currency in the amount of \$2,000 and a cashier's check payable to E and Q in the amount of \$9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(1)(iv) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for \$12,000. F gives S traveler's checks totalling \$2,400 and pays the balance with a personal check payable to S in the amount of \$9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as cash for purposes of section 6050I and this section. However, because the personal check is not treated as cash for purposes of section 6050I and this section, S has not received more than \$10,000 in cash in the transaction and no report is required to be filed under section 6050I and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for \$16,500. G pays T with a cashier's check payable to T in the amount of \$16,500. The cashier's check is not treated as cash because the face amount of the check is more than \$10,000. Thus, no report is required to be made by T under section 6050I and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a

passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds \$10,000 in face amount, exceeds \$10,000. Because the transaction is a designated reporting transaction, the money orders are treated as cash for purposes of section 6050I and this section. Therefore, because W has received more than \$10,000 in cash with respect to the transaction, W must make the report required by section 6050I and this section.

(2) *Consumer durable.* The term *consumer durable* means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.

(3) *Collectible.* The term *collectible* means an item described in paragraphs (A) through (D) of section 408(m)(2) (determined without regard to section 408(m)(3)).

(4) *Travel or entertainment activity.* The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of § 1.274-2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

(5) *Retail sale.* The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(6) *Trade or business.* * * *

(7) *Transaction.* * * *

(8) *Recipient.* * * *

* * * * *

(g) *Cross-reference to penalty provisions—(1) Failure to file correct information return.* See section 6721 for civil penalties relating to the failure to file a correct return under section 6050I(a) and paragraph (a) of this section.

(2) *Failure to furnish correct statement.* See section 6722 for civil penalties relating to the failure to furnish a correct statement to identified persons under section 6050I(e) and paragraph (f) of this section.

(3) *Criminal penalties.* Any person who willfully fails to make a return or

makes a false return under section 6050I and this section may be subject to criminal prosecution.

Par. 3. In paragraph (c)(7), as redesignated, of § 1.6050I-1, all references to paragraphs (c)(3)(i) and (c)(3)(ii) of § 6050I-1 are revised to read "(c)(7)(i)" and "(c)(7)(ii)," respectively.

Par. 4. In paragraph (c)(8), as redesignated, of § 1.6050I-1, all references to paragraphs (c)(4)(i) and (c)(4)(ii) of § 6050I-1 are revised to read "(c)(8)(i)" and "(c)(8)(ii)," respectively.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: October 25, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-27408 Filed 11-14-91; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

Notices to PBGC of Failures To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim final rule with request for comments.

SUMMARY: The Pension Protection Act amended the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986 by imposing a lien for failure to make required contributions to a single-employer plan when a required payment is not made when due and the total of unpaid balances of required payments not made when due (including interest) exceeds \$1 million. The lien, which is in favor of the plan, is upon all property and property rights belonging to the person(s) liable for contributions. Because the lien may be perfected and enforced only by or at the direction of the Pension Benefit Guaranty Corporation ("PBGC"), a person that fails to make a required payment must notify the PBGC within 10 days of the payment due date. This interim final rule adds submission of PBGC Form 200 as the procedure for complying with the statutory notification requirement with respect to plans covered by Title IV of ERISA and provides for supplementary information submissions. The PBGC has requested Office of Management and Budget approval of PBGC Form 200.

DATES: Effective date: January 1, 1992.

Comment deadline: Comments must be received on or before December 16, 1991.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Comments may be hand-delivered to suite 7200 at the above address between 9 a.m. and 5 p.m. Written comments will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Judith A. Neibrief, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Pension Protection Act ("PPA") amended the minimum funding standards of section 412 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 412) and section 302 of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1082) by, among other things, adding identical lien provisions as new subsection (n) and new subsection (f), respectively section 9304(e)(2) of the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87") (Pub. L. 100-203)). These provisions apply for any post-1987 plan year for which the funded current liability percentage (as defined in Code section 412(l)(8)(B) and ERISA section 302(d)(8)(B)) of defined benefit plan other than a multiemployer plan (*i.e.*, a single-employer plan) is less than 100 percent (subsections (n)(2) and (f)(2)).

Subsections (n)(1) and (f)(1) impose a lien in favor of a plan that is subject to the minimum funding standards if (1) any person fails to make a required installment or any other payment required under section 412 of the Code and section 302 of ERISA when due, and (2) the unpaid balance of the required installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million. The amount of the lien is equal to the lesser of (1) the amount by which these unpaid balances (including interest) exceed \$1 million or (2) the aggregate unpaid balance of required installments and other payments (including interest) for post-1987 plan years for which payment has not been made before the

due date (subsections (n)(3) and (f)(3)). This amount is treated as taxes due and owing the United States (subsections (n)(4)(C) and (f)(4)(C)).

The statutory lien is upon all property and rights to property (whether real or personal) belonging to the person or persons that are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member). It arises on the 60th day following the due date for the required payment and continues until the last day of the first plan year in which the total of the unpaid balances (including interest) described above no longer exceeds \$1 million (subsections (n)(4)(B) and (f)(4)(B)).

Any such lien may be perfected and enforced only by the Pension Benefit Guaranty Corporation ("PBGC") or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group (subsections (n)(5) and (f)(5)). Therefore, subsections (n)(4)(A) and (f)(4)(A) require persons committing payment failures to notify the PBGC, within 10 days of the due date for the required installment or other required payment, whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

To implement the statutory notification requirement with respect to plans that are covered by Title IV of ERISA, the PBGC has developed PBGC Form 200, Notice of Failure to Make Required Contributions, with related filing instructions, and has submitted it to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). Today's *Federal Register* also includes a notice that PBGC is seeking OMB approval and solicits public comment. (Because the PBGC has requested that OMB conduct its review on an expedited schedule, this notice includes a copy of the form and related instructions.)

Since each member of a controlled group of which a contributing sponsor is a member is liable for payment of all required contributions and installments (Code section 412(c)(11) and ERISA section 302(c)(11)), all members of the controlled group commit a failure described in paragraph (f)(1) and, hence, are subject to the statutory notification requirement. Nevertheless, as indicated in the PBGC's Paperwork Reduction Act notice, the requirement to file Form 200 is limited to a contributing sponsor and, if a contributing sponsor is a member of a parent-subsidiary controlled group of

corporations or group of trades or businesses under common control, the parent of such group. (Where there is more than one parent, "parent" refers to the parent at the highest level in the chain of corporation and/or other organizations comprising the group.)

In its initial implementation action, the PBGC has limited the filing requirement to these persons in order to minimize the regulatory burden, consistent with Administration goals and policies. Based on experience with filings by contributing sponsors and parents, the PBGC will determine whether to expand its filing requirement to include other controlled group members. The PBGC emphasizes that the scope of the filing requirement does not in any way limit the joint and several liability for required payments of each controlled group member (whether the controlled group is a "parent-subsidiary", "brother-sister", or "combined" group), the imposition of the statutory lien on all assets of each controlled group member, or the ability of the PBGC to take all appropriate steps to perfect and enforce the lien.

The PBGC also has acted to limit the cost of compliance by restricting Form 200 to information generally needed to make decisions regarding enforcement of the statutory lien, by specifying information (to the extent possible) in terms of existing documents (*e.g.*, the actuarial valuation report; financial statements), and by permitting persons to identify a previous submission with required documentation or other information (*e.g.*, a previously-filed Form 200 or a filing in a distress termination proceeding (see 29 U.S.C. 1341(c)) rather than resubmit information. Similarly, as discussed below, the PBGC is amending § 2615.16(b) of the regulations to expand the exceptions to the notice requirements for reportable events.

Form 200 currently has four parts. In part I, the filer would provide certain identifying information. In part II (relating to plan funding information) and part III (relating to contributing sponsor and controlled group financial information), the filer would provide information that the PBGC needs (1) to determine the amount of the statutory lien, (2) to evaluate the funding status of the plan, and (3) to evaluate the financial condition of the filer and members of the same controlled group (if any). Part IV provides for certifications by an officer (or individual of comparable authority) of the filer and by an enrolled actuary.

Finally, the PBGC notes that the PPA further enhanced its enforcement authority by adding section 4071 (29

U.S.C. 1371) to ERISA (OBRA '87 section 9314(c)(1)). Section 4071 (as clarified by section 7881(l)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239)) authorizes the PBGC to assess a penalty when, among other things, a person fails to provide any notice or other material information required under section 302(f)(4) of ERISA, or any regulations prescribed thereunder (or under subtitle A), within the applicable time limit. (The penalty is payable to the PBGC and may not exceed \$1,000 for each day that the failure continues.) The interim final rule discussed below requires certain persons to provide a completed Form 200 to comply with the statutory notification requirement and, upon written notification, requires any such person and/or other persons to supplement this notice by providing additional material information within specified time limits, and the PBGC may assess penalties for noncompliance with these requirements.

Interim Final Rule

The PBGC is adding the procedure for complying with the statutory notification requirement with respect to single-employer plans covered by Title IV of ERISA as new § 2615.30 (29 CFR 2615.30). Until now, part 2615 of the regulations has addressed only requirements for reportable events (*i.e.*, reporting and notification requirements imposed under section 4043 of ERISA (29 U.S.C. 1343)). As amended, this restriction is removed from the title of part 2615, the reportable events requirements are designated as subpart A of part 2615, and a new subpart B is added for this notice (new § 2615.30 of the regulations) and, as appropriate, any future rules implementing other notification requirements.

Paragraph (a) of § 2615.30 requires that, to comply with the statutory notification requirement, a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent must complete and submit Form 200. To satisfy this requirement, the form must include all required documentation and other information and be properly certified.

Form 200 must be filed within 10 days after the due date for a required installment or other required payment. This 10-day period is computed in accordance with § 2615.7 of the regulations (paragraph (a)(1)(i)). In view of the need for the PBGC to proceed quickly if it is to protect the interests of the pension insurance program and plan participants and beneficiaries, the filing date is the date on which the form is

received by the office specified in the instructions (paragraph (a)(1)(ii)).

As discussed above, the PBGC has sought to minimize the regulatory burden of this notification requirement by, among other things, avoiding duplicative submissions of information. The same goal is being addressed in paragraph (a) of § 2615.30 and by an amendment to § 2615.16(b) of the regulations. When either a contributing sponsor or the parent completes and submits Form 200 in accordance with the regulations, the PBGC will deem the other one to have so filed and will consider the statutory notification requirement to be satisfied by all members of the controlled group of which the filer is a member (paragraph (a)(2)).

A payment failure that triggers the requirement to file Form 200 also may be a reportable event described in § 2615.16 (failure to meet minimum funding standards and granting of funding waiver). Since completion and submission of Form 200 in accordance with § 2615.30 will provide the PBGC with the information needed for reportable event purposes, the PBGC is expanding paragraph (b) of § 2615.16, which establishes the conditions under which the 30-day notice requirement is waived, to add instances in which Form 200 has been submitted, in accordance with § 2615.30, with respect to the same failure. (As indicated in its Agenda of Regulations Under Development (56 FR 54214, 54220, October 21, 1991), the PBGC plans to publish a final rule that conforms various of its regulations to current law. That final rule will include other amendments to part 2615 of the regulations.)

Paragraph (b) of § 2615.30 provides that the PBGC may require that Form 200 be supplemented if the PBGC determines it needs additional information to make decisions regarding enforcement of a lien. The PBGC has concluded that it can restrict the contents of Form 200 to information generally needed in such decisionmaking by retaining the ability to tailor notice requirements to the facts of particular cases. In any such situation, the PBGC's notification to a person required to supplement the notice will be in writing, and the additional information must be filed with the PBGC within 7 days after the date of the PBGC's notification, as determined in accordance with §§ 2615.6 and 2615.7 of the regulations, unless the PBGC specifies a different deadline.

Finally, paragraph (c) of § 2615.30 defines terms used in paragraphs (a) and (b) of this section.

These amendments involve rules of agency procedure and incorporate a statutory notification requirement. Moreover, as indicated in PBGC's notice of request for OMB approval of PBGC Form 200, which includes a copy of the form together with the related instructions and solicits public comment, the PBGC believes that in order to perform its functions effectively and efficiently, use of Form 200 as a compliance procedure should be initiated in the near future. Therefore, the PBGC has found that the Administrative Procedure Act does not require publication of a notice of proposed rulemaking and that further notice and public procedure on these amendments is unnecessary and impracticable (5 U.S.C. 553(b)), and it is issuing these amendments as an interim final rule, effective January 1, 1992 (*i.e.*, use of Form 200 will be required for any notice of failure to make required contributions for which the 10-day filing period ends on or after that date). (Since OMB is conducting its review on a 30-day expedited schedule, the PBGC anticipates approval before this date, and it will publish a notice, with an approved form and related instructions, upon completion of that review.)

E.O. 12291

The PBGC has determined that this interim final rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The amendments to the regulations made by this interim final rule are limited to a procedure for complying with a statutory notification requirement.

Paperwork Reduction Act

As discussed in the notice of request for OMB approval published elsewhere in today's *Federal Register*, the PBGC has requested OMB approval of Form 200 under the Paperwork Reduction Act, and has requested that OMB conduct its review on a 30-day expedited schedule. The PBGC estimates that there would be one initial and two subsequent filings per year with respect to each of ten plans, with average response times of

5.75 hours for initial filings and 2.75 hours for subsequent filings, for an aggregate annual burden of 112.5 hours. Comments concerning this collection of information should be submitted by December 16, 1991, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: PBGC Desk Officer, 725 17th Street NW., room 3208, Washington, DC 20503.

List of Subjects in 29 CFR part 2615

Employee benefit plans, Pension insurance, Reporting requirements.

For the reasons set forth above, the PBGC is amending 29 CFR part 2615 as follows:

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

1. The authority citation for part 2615 is revised to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, 1365.

2. Part 2615 is amended by revising the heading as set forth above and adding a subpart heading before § 2615.1 to read as follows:

Subpart A—Reportable Events

§§ 2615.1, 2615.2, 2615.3, 2615.4, 2615.6, and 2615.7 [Amended]

3. Sections 2615.1, 2615.2, 2615.3 (a) and (e), 2615.4, 2615.6, and 2615.7 are amended by removing the word "part" each time it appears and adding, in its place, "subpart".

4. Paragraph (b) of § 2615.16 is amended by adding a sentence at the end to read as follows:

§ 2615.16 Failure to meet minimum funding standards and granting of funding waiver.

(b) * * * In addition, the 30-day notice requirement contained in § 2615.3(a) is waived for the event described in this section if, with respect to the same failure, Form 200 has been completed and submitted (including all required documentation and other information) in accordance with § 2615.30 of this part.

5. Part 2615 is further amended by adding subpart B consisting of § 2615.30 to read as follows:

Subpart B—Certain Other Statutory Provisions

§ 2615.30 PBGC Form 200, Notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of the Act and section 412(n)(4)

of the Code with respect to a single-employer plan that is covered by title IV of the Act, a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent must complete and submit a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions, in accordance with this section. If section 302(f) of ERISA and section 412(n) of the Code apply to a plan, notice of failure to make required contributions is required whenever the unpaid balance of a required installment or any other payment required under section 302 of the Act and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(i) The 10-day period for filing Form 200 is computed in accordance with § 2615.7 of this part.

(ii) The filing date for Form 200 is the date on which it is received by the PBGC office specified in the instructions, if it is received no later than 4 p.m. on a weekday other than a Federal holiday. If it is received after 4 p.m. or on a weekend or Federal holiday, the Form 200 is deemed to be filed on the next regular business day.

(2) If a contributing sponsor or the parent completes and submits Form 200 in accordance with this section, the PBGC will deem the other person to have so filed and it will consider the notification requirement in section 302(f)(4) of the Act and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of the Act and section 412(n) of the Code, the PBGC may, by written notification, require any contributing sponsor or member of a controlled group of which a contributing sponsor is a member to supplement the Form 200. Such additional information must be filed with the PBGC office specified within 7 days after the date of the written notification, as determined in accordance with §§ 2615.6 and 2615.7 of this part, or by a different time specified therein.

(c) *Definitions.* For purposes of this section:

Act means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under section 404(a)(1) of the Code for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group, for purposes of section 302(f) of the Act and section 412(n) of the Code, means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Code.

Covered by Title IV of ERISA means that a plan so described is covered by section 4021(a) and not excluded under section 4021(b) of the Act.

Parent means the parent of a "parent-subsidiary" controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of section 414 of the Code and the regulations thereunder). Where there is more than one parent in a "parent-subsidiary" group, the term "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group.

PBGC means the Pension Benefit Guaranty Corporation.

Single-employer plan means a defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Issued in Washington, DC this 12th day of November, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-27548 Filed 11-14-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2617

Determination of Plan Sufficiency and Termination of Sufficient Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Pension Benefit Guaranty Corporation's regulation on termination of sufficient plans, 29 CFR part 2617, to add rules governing the information that must be included in a notice of intent to terminate in a standard termination

under title IV of the Employee Retirement Income Security Act of 1974. This interim rule requires the administrator to apprise participants of the impact of the proposed standard termination on their benefits under the plan, *i.e.*, that all benefit liabilities will be provided and that the PBGC's guarantee is extinguished upon distribution of the benefit liabilities. This interim rule is needed to make plan participants aware of the legal effect of the distribution of plan assets when a plan terminates in a standard termination.

DATE: This interim rule is effective December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Angela J. Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), the Pension Protection Act (Subtitle D of Title IX of OBRA 1987) ("PPA"), and Subtitle H of Title VII of OBRA 1989, 29 U.S.C. 1301-1461 ("ERISA"), sets forth the means whereby a single-employer pension plan may be terminated either in a "standard termination" or in a "distress termination." Sections 4041(a)(2) and 4041(b)(1)(A) of ERISA provide that a standard termination of a single-employer plan is initiated when the plan administrator issues a notice of intent to terminate to affected parties. Section 4041(a)(2) provides that the notice of intent to terminate (1) shall be in writing, (2) shall be issued to each affected party not less than 60 days before the proposed termination date, (3) shall state that a standard termination is intended and the proposed termination date, and (4) shall include any related additional information required by PBGC regulations.

The PBGC believes that certain additional information should be included in the notice of intent to terminate (see § 2617.12 of Proposed Rules, 52 FR 33318, 33339, September 2, 1987) and will specify the additional information in its final termination rules, which it expects to publish in the near future. However, the PBGC has now determined that participants and other affected parties in a standard

termination have an immediate need for timely information concerning the legal effect on their plan benefits of a standard termination and of the distribution of plan assets upon plan termination.

Section 4041(b)(2)(D) of ERISA provides that a standard termination may occur only if, at the time of distribution, plan assets are sufficient to provide for all benefit liabilities. Section 4041(b)(3) of ERISA requires the plan administrator to provide for all benefit liabilities either (1) through the purchase of "irrevocable commitments" (annuity contracts) from an insurer, or (2) in another form of benefit, such as a single lump sum distribution, permitted by the provisions of the plan and any applicable regulations.

In the case of a distribution through the purchase of an annuity contract, the "irrevocable commitment" has been purchased, and a distribution occurs, when the obligation to provide a benefit to an individual passes from a pension plan to an insurer. In the case of an alternative benefit, distribution occurs on the date the plan administrator makes the actual distribution to a participant or beneficiary or to another recipient authorized by the participant or beneficiary in accordance with applicable law and regulations. When plan assets have been distributed in a standard termination, the plan's benefit liabilities have been satisfied, and PBGC's guarantee therefore ends. The PBGC is not authorized by ERISA to guarantee benefits provided under irrevocable commitments purchased for participants in terminating plans, as explained in detail in an Advance Notice of Proposed Rulemaking published on June 21, 1991 (56 FR 28642, 28644-28645).

Need for Interim Rule

On September 2, 1987, the PBGC published proposed rules for standard and distress terminations (53 FR 13318). Several comments were received in response to proposed § 2617.12, which set forth rules for the issuance and contents of a notice of intent to terminate in a standard termination. Two of the comments welcomed the details specified under § 2617.12(d) and suggested that additional items be required to more fully apprise participants of the impact of a proposed termination on their benefits under the plan. PBGC agrees with those comments, and has decided to require, prior to issuance of its final termination rules, inclusion of some of those provisions in the notice of intent to terminate.

In deciding to act at this time, the PBGC is mindful of the recent and highly publicized financial difficulties of certain insurers (most notably the Executive Life Insurance Company, which was placed in conservatorship in April 1991). These events have focused public concern on the potential risks faced by participants in terminating pension plans. The PBGC has recently received many inquiries from plan participants directly or through their Congressional representatives concerning their retirement benefits and the extent to which an irrevocable annuity contract purchased to provide a participant's benefits under a terminated plan is covered by the PBGC guaranty program. It has become apparent that many participants do not know that they are entitled to receive their full benefit liabilities in a standard termination and that the PBGC's guarantee ends when the distribution of their benefit liabilities occurs.

The PBGC believes that it is important for the participants to be timely informed of the legal effect of a standard termination of their plan and of the distribution of plan assets upon termination. Further, the PBGC believes that the best way in which to assure that the participants receive such information is to include it in the notice of intent to terminate that initiates the termination. Accordingly, the PBGC has decided to issue an interim rule implementing and making final the basic rules for issuance and content of a notice of intent to terminate with the additions requested in the public comments discussed previously. Other items of information in proposed § 2617.12(d) will be reviewed and considered for inclusion when the final rule is published.

Interim Rule

This interim rule adds to the PBGC's regulation on Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR part 2617) a new subpart E, which contains rules for the contents of a notice of intent to terminate in a standard termination. (The PBGC is in the process of revising 29 CFR part 2617 and its regulation on Notice of Intent to Terminate (29 CFR part 2616), which were, to a large extent, rendered obsolete by the passage of the amendatory legislation cited previously; see notice of proposed rulemaking (52 FR 33318, September 2, 1987) that would replace these regulations. The PBGC anticipates that it will incorporate the substance of this interim rule into the final version of its termination regulations and its standard termination

forms (PBGC Forms 500 and 501), which will be revised at the time the final regulations are promulgated.)

Section 2617.42(a) of this interim rule sets forth the general statutory rules for issuance of a notice of intent to terminate namely, that it must be a written notice issued to participants (and other affected parties) at least 60 days before the proposed termination date. Paragraphs (b) and (c) of § 2617.42 give rules for the method and date of issuance of the notice. Those provisions, which are included in the proposed rule, elicited no comments and are included in this interim rule with clarifying changes only.

Section 2617.42(d) requires plan administrators to state in the notice (1) that the plan is to be terminated in a standard termination, (2) the proposed termination date, (3) that, in a standard termination, all benefit liabilities under the plan will be provided to participants and their beneficiaries, and (4) that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant, either by the purchase of irrevocable commitments from an insurer to provide annuities or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's benefit ends.

The definitions that have been included in § 2617.41 are basically the same as the definitions in the Standard Termination Filing Instructions for PBGC Forms 500 and 501 and, with one exception, reflect statutory or other regulatory definitions. The definition of "affected party" has been expanded (both in the instructions and in § 2617.41) in accordance with comments received on the proposed termination rules that a former employee organization may have sufficient ties to a benefit program to be properly included as an affected party.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this interim rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act of 1980 that these rules will not have a

significant economic impact on a substantial number of small entities. The costs attendant to including the required two statements in a notice of intent to terminate for small pension plans (those with fewer than 100 participants) will be insignificant since the notice must be prepared under the statutory provisions and the inclusion of this additional information will require minimal time and expense. Therefore, compliance with sections 603 and 604 of the Act is waived.

OMB Clearance of Information Collection

The information collection requirements in 29 CFR parts 2616 and 2617, as amended by "Notice of Interim Procedures" (51 FR 12491, April 10, 1986) and "Notice of Revised Termination Rules" (53 FR 1904, January 22, 1988), including requirements for the notice of intent to terminate, have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) for use through March 31, 1993, OMB control number 1212-0036.

List of Subjects in 29 CFR Part 2617

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

In consideration of the foregoing, part 2617 of subchapter C of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

2. Part 2617 is amended to add a new subpart E as follows:

PART 2617—DETERMINATION OF PLAN SUFFICIENCY AND TERMINATION OF SUFFICIENT PLANS

Subpart E—Notice of Intent To Terminate in Standard Termination

Sec.

2617.40 Purpose and scope.

2617.41 Definitions.

2617.42 Notice of intent to terminate.

Subpart E—Notice of Intent To Terminate in Standard Termination

§ 2617.40 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to prescribe minimum rules for the contents of and procedures for issuance of the notice of intent to terminate a single-employer defined benefit pension plan in a standard termination.

(b) *Scope.* This subpart applies to any single-employer plan covered under

section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a standard termination is issued on or after December 16, 1991.

§ 2617.41 Definitions.

For purposes of this subpart:

Affected party means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), and each employee organization representing participants. An employee organization that represented participants under the plan within five years prior to the issuance of a notice of intent to terminate (or, if more than one, the last such employee organization) is deemed to be an affected party. In connection with any notice required under this subpart, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986).

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Notice of intent to terminate means the 60-day advance notice to affected parties advising of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.42 of this part.

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate.

Standard termination means the voluntary termination, in accordance with section 4041(b) of the Act, of a single-employer plan that is sufficient for benefit liabilities (determined as of the termination date) when the final distribution of assets occurs.

§ 2617.42 Notice of Intent to terminate.

(a) *General rule.* At least 60 days before the proposed termination date of a plan to which this subpart applies, the plan administrator shall issue to each

affected party a written notice of intent to terminate containing all of the information specified in paragraph (d) of this section.

(b) *Method of issuance.* The plan administrator shall issue the notice of intent to terminate to each affected party individually. Each notice shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator may include in the notice of intent to terminate any information that the plan administrator deems necessary or advisable, and shall include the following:

(1) Information needed to identify the plan;

(2) A statement that a standard termination of the plan is intended and the proposed termination date;

(3) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant; and

(4) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide annuities or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's benefit ends.

(Approved by the Office of Management and Budget under control number 1212-0036)

Issued in Washington, DC this 12th day of November, 1991.

Lynn Martin,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors

authorizing its chairman to issue this interim final rule.

Carol Connor Flowe,
Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 91-27549 Filed 11-14-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of December 1991.

EFFECTIVE DATE: December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for

making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
December 1991 ...	.07	.06875	.0675	.06625	.065	.06375	.06375	.06375	.06375	.06375	.06125	.06125	.06125	.06125	.05875

Issued at Washington, DC, on this 6th day of November 1991.

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 91-27550 Filed 11-14-91; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 275 and 294

Privacy Act of 1974; Implementation; Redesignation of Parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment.

SUMMARY: This document redesignates 32 CFR part 294 as part 275. This is an administrative change within Chapter I of title 32 of the Code of Federal Regulations for ease of use and to transfer parts into the appropriate subchapter.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155, telephone 703-697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 275 and 294

Banks, banking, Credit, Government publications, Newspapers and magazines, Privacy Act.

Accordingly, under the authority of 10 U.S.C. 133, 32 CFR Chapter I, is amended as follows:

PART 275—[REDESIGNATED FROM PART 294]

1. Part 294 is redesignated as part 275 and the authority citation for newly redesignated part 275 continues to read as follows:

Authority: 92 Stat. 3697 et seq. (12 U.S.C. 3401, et seq.)

§ 275.2 [Amended]

2. Newly redesignated § 275.2(b) is amended by changing "§ 294.6(a)" to "§ 275.6(a)".

§ 275.4 [Amended]

3. Newly redesignated § 275.4 is amended by changing "§ 294.14" to "§ 275.14".

§ 275.5 [Amended]

4. Newly redesignated §§ 275.5(a)(3) and 275.5(b)(1) are amended by changing "§ 294.14" to "§ 275.14".

§ 275.7 [Amended]

5. Newly redesignated § 275.7(b) is amended by changing the part designation "294" to "275" throughout the paragraph.

§ 275.8 [Amended]

6. Newly redesignated § 275.8 is amended in paragraph (b) introductory text by changing "§ 294.8(a)" to "§ 275.8(a)"; paragraph (c) by changing "§ 294.8(b)" to "§ 275.8(b)"; and paragraph (f) by changing "§ 294.14" to "§ 275.14" and "§ 294.8(a)" to "§ 275.8(a)"

§ 275.9 [Amended]

7. Newly redesignated § 275.9 is amended in paragraph (a)(2)(ii) by changing "§ 294.12" to "§ 275.12"; paragraph (b)(1) by changing "§ 294.8" to "§ 275.8"; paragraph (b)(3) by changing "§ 294.12" to "§ 275.12"; paragraph (c) by changing "§ 294.9" to "§ 295.9"; and paragraph (d) by changing "§ 294.14" to "§ 275.14"

§ 275.10 [Amended]

8. Newly redesignated § 275.10(d) is amended by changing "§ 294.14" to "§ 275.14"

§ 275.11 [Amended]

9. Newly redesignated § 275.11 is amended in paragraph (c) by changing "§ 294.12" to "§ 275.12" and paragraph (d) by changing "§ 294.14" to "§ 275.14"

§ 275.12 [Amended]

10. Newly redesignated § 275.12 is amended in paragraph (a) by changing the part designation "294" to "275" throughout the paragraph; paragraph (c)(1) by changing "294.9(a)(2)(ii)" to "275.9(a)(2)(ii)"; paragraph (c)(2) by changing "294.9(b)(3)" to "275.9(b)(3)"; paragraph (c)(3) by changing "294.11(c)" to "275.11(c)" both times it appears; paragraph (c)(4) by changing "294.13(c)" to "275.13(c)" both times it appears; and paragraph (d) by changing "§ 294.14" to "§ 275.14"

§ 275.13 [Amended]

11. Newly redesignated § 275.13(c) is amended by changing "§ 294.12" to "§ 275.12"

Enclosure 1—[Amended]

12. Enclosure 1, first paragraph, is amended by changing "§ 294.7" to "§ 275.7"

Dated: November 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 91-27343 Filed 11-14-91; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Modification of Fees for Record Retrieval by Computer

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule modifies the fees charged for furnishing Postal Service records retrieved by computer to members of the public. The modifications to part 265—Release of Information—revise the fees for retrieving data by computer to reflect current labor and administrative costs. The modified fees implement existing policy to recover the actual cost incurred by the Postal Service for the retrieval and represent no change in policy concepts.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268-4872.

SUPPLEMENTARY INFORMATION: On September 4, 1991, the Postal Service published for comment in the Federal Register (56 FR 43736) a proposal to modify the fees charged for furnishing Postal Service records retrieved by computer to members of the public. Interested persons were invited to submit comments on the proposal by October 4, 1991.

No comments were received. Accordingly, the Postal Service hereby adopts the proposal without change and amends 39 CFR part 265 as follows:

List of Subjects in 39 CFR Part 265

Release of information, Postal service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. Appendix A to part 265 is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Description of services	Rate	Unit
A. Central Processing Unit Utilization based upon IMB 3090-200 Performance Standard:		
Batch Processing Services.....	\$3,600.00	Hour
On-Line Services.....	\$4,000.00	Hour
Channel Utilization:		
Direct access Storage Devices .....	.54	1,000
Tape Channel .....	.96	1,000
('execution of channel program)		
Local Printing.....	1.20	*1,000
B. Personnel Charges:		
Programming Services	53.00	Hour
Manual Unit Services	37.00	Hour

¹ EXCPs.
² Print lines.

Stanley F. Mires,
Assistant General Counsel, Legislative
Division.

[FR Doc. 91-27434 Filed 11-14-91; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AF08

Total Disability Ratings for Pension Based on Unemployability and Age of the Individual

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its rating schedule regarding disability requirements for pension applicants. The amendment regarding deletion of presumption of pension entitlement at age 65 is necessary to implement provisions of the recently enacted Omnibus Budget Reconciliation Act of 1990. The intended effect of this amendment is to remove presumption of pension entitlement at age 65, and to revise the age and disability requirements.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits

Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 4.17 in the Federal Register of May 3, 1991, (56 FR 20395-20396). Interested persons were invited to submit written comments, suggestions or objections on or before June 3, 1991. As no comments

were received, the proposed amendments are adopted without change.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have 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.

The Catalog of Federal Domestic Assistance program numbers are 64.101 and 64.104.

List of Subjects in 38 CFR Part 4

Handicapped, Pension, Veterans.

Approved: October 10, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

Subpart A—General Policy in Rating

2. In § 4.17, the third, fourth, and fifth sentences of the introductory text are removed. In the sixth sentence, the word "reduced" is removed; and an authority citation is added at the end of the section to read as follows:

§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

(Authority: 38 U.S.C. 355; 38 U.S.C. 1502)

[FR Doc. 91-27218 Filed 11-14-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AF28

Persian Gulf War Veterans' Benefits Act of 1991

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning periods of war and entitlement to nonservice-connected pension benefits. This amendment is based on recently enacted legislation authorizing payment of benefits to veterans of the Persian Gulf War. The intended effect of this amendment is to assure that the regulations accurately identify the benefits to which veterans of the Persian Gulf War may be entitled.

EFFECTIVE DATE: This amendment is effective April 16, 1991, the date the legislation was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 332 of the Persian Gulf War Veterans' Benefits Act of 1991, Public Law 102-25, amended 38 U.S.C. 101 to add the Persian Gulf War, beginning August 2, 1990, and terminating on a date to be determined by Presidential proclamation or law, as an official "period of war" for the purpose of veterans benefits. VA has amended 38 CFR 3.2 to conform with this new statutory provision.

Section 333 of Public Law 102-25 amended 38 U.S.C. 501 and 541 to provide pension eligibility for Persian Gulf War veterans and their surviving spouses. VA has amended 38 CFR 3.3, 3.17 and 3.54 to conform with this new statutory provision.

Because these amendments implement statutory changes as outlined above, publication as a proposal for public notice and comment is unnecessary and VA is issuing a final rule.

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments are not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5

U.S.C. 601(2). In any case, these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. These amendments will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 24, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. In § 3.2, add new paragraph (i) and its authority citation to read as follows:

§ 3.2 Periods of war.

* * * * *

(i) *Persian Gulf War.* August 2, 1990, through date to be prescribed by Presidential proclamation or law.

(Authority: 38 U.S.C. 101(33))

§ 3.3 [Amended]

3. In § 3.3(a)(3), second sentence, remove the words "and the Vietnam era", and insert, in their place, the words ", the Vietnam era and the Persian Gulf War".

§ 3.17 [Amended]

4. In § 3.17, first sentence, remove the words "or the Vietnam era", and insert,

in their place, the words ", the Vietnam era or the Persian Gulf War".

§ 3.54 [Amended]

5. In § 3.54, a new paragraph (a)(3)(viii) is added and the authority citation at the end of paragraph (a)(3) is revised to read as follows:

§ 3.54 Marriage dates.

* * * * *

(a) * * *

(3) * * *

(viii) Persian Gulf War—January 1, 2001.

(Authority: 38 U.S.C. 532(d), 534(c), 536(c), 541(e), 541(f))

* * * * *

[FR Doc. 91-26991 Filed 11-14-91; 8:45 am]

BILLING CODE 8320-01-M

1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; no heavy metals (with a possible waiver for metals other than lead); and the inclusion of deposit preventing additives. The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D) any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the governor's state which has been classified as not attaining the ozone ambient air quality standard. That subparagraph further provides that EPA is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-4080-8]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for extension of the Reformulated Gasoline Program to Massachusetts and Pennsylvania.

SUMMARY: This notice publishes the applications of the Governors of the Commonwealths of Massachusetts and Pennsylvania to have the prohibition set forth in section 211(k)(5) of the Clean Air Act as amended by Public Law 101-549 (the Act) applied in their states. Under section 211(k)(6) of the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located.

DATES: The effective date of the prohibitions described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this Notice are contained in Public Docket No. A-91-02. This docket is located in room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from

application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register**.

EPA published a notice of proposed rulemaking regarding the reformulated gasoline program July 9, 1991. Since that time, an agreement on the requirements was developed through regulatory negotiation; an outline of that agreement is available in the Docket for this rulemaking. A supplemental proposal more fully describing the agreement will be published as soon as possible. The proposed regulations will describe the certification program for reformulated gasolines, the averaging program and the enforcement program, among other elements. EPA plans to promulgate a final rule describing the requirements for reformulated gasoline in accordance with the statutory deadline.

II. Massachusetts' Request

EPA received an application from the Hon. William F. Weld, Governor of Massachusetts, for that state to be included in the reformulated gasoline program. His application is set out in full below.

[Massachusetts letterhead]

August 14, 1991.

William Reilly,
Administrator, U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Reilly: By this letter the Commonwealth of Massachusetts formally requests inclusion in the Reformulated Gasoline Program, as described in section 211(k) of the 1990 Clean Air Act Amendments.

The entire state of Massachusetts is in the "serious" nonattainment category for ozone, and our Department of Environmental Protection believes that participation in the reformulated gasoline program is an important, if not essential element in the state's plan to achieve compliance with the ozone standard by the deadline of November 1996.

Thank you for your time and attention in this matter.

Sincerely,
William F. Weld,
Governor.

EPA also received a request from the Honorable Robert P. Casey to opt the Marginal and Moderate nonattainment areas in his state into the reformulated gasoline program. His letter is set out in full below:

[Commonwealth of Pennsylvania Letterhead]
September 25, 1991.

William K. Reilly,
Administrator, U.S. Environmental Protection Agency, Room 1200 West Tower, 401 M Street SW., Washington, DC 20460.

Dear Mr. Reilly: Pursuant to section 211(k)(6) of the Clean Air Act, 42 U.S.C. 7545(k)(6), a state can, upon the application of the Governor, require that the Administrator extend the federal reformulated fuels program to additional ozone non-attainment areas in the state. This letter serves as my application to you to extend the federal reformulated fuels program required by section 211(k) to the marginal and moderate ozone nonattainment areas in Pennsylvania identified in Attachment A.

Section 181 of the Clean Air Act, 42 U.S.C. 7511, classifies ozone nonattainment areas as marginal, moderate, serious, severe and extreme. There are thirty-three (33) counties in Pennsylvania which the Department and EPA have identified as either marginal, moderate or severe ozone nonattainment areas. Attachment A identifies the counties which have been classified as marginal, moderate or severe ozone nonattainment areas. The reformulated federal fuels programs already applies in the five counties classified as severe ozone nonattainment areas under section 211. My request to "opt-in" to the reformulated fuels program includes the twenty-eight (28) counties which are identified on Attachment A as marginal or moderate ozone nonattainment areas.

The state contact person for this application to extend the reformulated fuels program to all marginal and moderate ozone nonattainment areas is:

James K. Hambright,
Director,

Bureau of Air Quality Control, 1st Floor
Executive House, 2nd and Chestnut Streets,
P.O. Box 2357, Harrisburg, Pennsylvania
17101-2357, Telephone: (717) 787-9702, Fax:
(717) 772-2303

The expansion of the federal reformulated fuels program to marginal and moderate ozone nonattainment areas is a major component of the Commonwealth's overall program to address regional ozone pollution in Pennsylvania and in adjacent northeast states.

Sincerely,
Robert P. Casey,
Governor.

Attachment

Attachment A

*Areas Classified as Severe Ozone Nonattainment Areas*¹

1. Philadelphia County
2. Montgomery County
3. Bucks County
4. Chester County
5. Delaware County

Areas Classified as Moderate Ozone Nonattainment Areas

1. Berks County
2. Fayette County
3. Washington County
4. Westmoreland County
5. Allegheny County
6. Armstrong County

7. Beaver County
8. Butler County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Lancaster County
2. York County
3. Adams County
4. Cumberland County
5. Dauphin County
6. Lebanon County
7. Perry County
8. Lehigh County
9. Northampton County
10. Carbon County
11. Monroe County
12. Lackawanna County
13. Luzerne County
14. Wyoming County
15. Columbia County
16. Blair County
17. Cambria County
18. Somerset County
19. Mercer County
20. Erie County

¹ These counties are already defined as "covered areas" and are subjected to the federal reformulated fuel program under Section 211(k)(10(D)).

III. Action

Pursuant to the governor's letters and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire state of Massachusetts and the Marginal and Moderate nonattainment areas in Pennsylvania beginning January 1, 1995 (except as provided above). The application of the prohibitions to these areas cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: November 7, 1991.

William K. Reilly,
Administrator

[FR Doc. 91-27520 Filed 11-14-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 90-26; FCC 91-307]

Rules Requiring That VHF Ship Station Transmitters Automatically Cease Operation After a Predetermined Period of Uninterrupted Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule affirms the Commission's rules exempting hand-held marine VHF transmitters from the requirement to have an automatic time-out timer. The Commission determined that, because of their low power, portable hand-held VHF transmitters did not contribute to the "stuck carrier" interference problem time-out timers were devised to address. This action was taken in response to a petition for partial reconsideration of the Commission's recent Report and Order, PR Docket 90-26, FCC 91-1 (56 FR 3786, January 31, 1991), which, in part, exempted hand-held marine VHF transmitters from the requirement to have an automatic time-out timer. The effect of this rule is to clarify the Commission's Rules to make it clearer when the exemption applies.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT:
J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted September 27, 1991, and released October 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20037.

Summary of Order: Mr. Bradford D. Carey (Carey) filed a petition for partial reconsideration of the Commission's recent Report and Order (R&O) which, in part, exempted hand-held marine VHF transmitters from the requirement to have an automatic time-out timer. Carey contended that the exception for hand-held units should be deleted because some hand-held transceivers can be operated from an external power supply and can be connected to the ship's antenna. Carey argued that such transmitters would be capable of causing interference if the carrier was stuck. The Commission exempted portable, hand-held transmitters from the requirement to have an automatic time-out timer because such radios pose no significant interference problem. Further, the R&O used the specific language—"hand-held transmitters"—to differentiate between such portable transmitters and ship station transmitters intended for fixed installation. We are amending the Rules to clarify further this difference.

Ordering Clauses: Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is Ordered That part 80 of the Commission's Rules is amended as shown at the end of this document, effective upon publication in the **Federal Register**.

Lists of Subjects in 47 CFR Part 80

Communications equipment, Marine safety, Radio, Stuck carriers, VHF ship stations.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Final Rules

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.141 is amended by adding a new paragraph (d) to read as follows:

§ 80.141 General provisions for ship stations.

(d) Operating conditions. Effective August 1, 1994, VHF hand-held, portable transmitters used while connected to an external power source or a ship antenna must be equipped with an automatic timing device that deactivates the transmitter and reverts the transmitter to the receive mode after an uninterrupted transmission period of five minutes, plus or minus 10 percent. Additionally, such transmitters must have a device that indicates when the automatic timer has deactivated the transmitter. See also § 80.203(c).

3. In Section 80.203, paragraph (c) is revised to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(c) All VHF ship station transmitters that are either manufactured in or imported into the United States, on or after August 1, 1993, or are initially installed on or after August 1, 1994, must be equipped with an automatic timing device that deactivates the transmitter

and reverts the transmitter to the receive mode after an uninterrupted transmission period of five minutes, plus or minus 10 per cent. Additionally, such transmitters must have a device that indicates when the automatic timer has deactivated the transmitter. VHF ship station transmitters initially installed before August 1, 1994, are authorized for use indefinitely at the same maritime station. VHF hand-held, portable transmitters are not required to comply with the requirements in paragraph (c) of this section except when used as described in § 80.141.

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[FR Doc. 91-27335 Filed 11-14-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 66]

RIN 2127-AD68

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Vehicles in Treadwear Convoy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the treadwear testing procedures in the Uniform Tire Quality Grading Standards (UTQGS) to permit the use of front-wheel drive passenger cars and light trucks, vans, and multipurpose passenger vehicles. Prior to this amendment, the treadwear grading procedures only permitted testing of passenger car tires on rear-wheel drive passenger cars. The agency concludes that this amendment will result in the use of test vehicles that more accurately reflect the types of vehicles currently being produced. The amendment will also provide treadwear evaluators with greater flexibility in obtaining vehicles.

DATES: Effective Date: This amendment becomes effective December 16, 1991.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by the agency December 16, 1991.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 25; Notice 66 and be submitted to the following: Administrator, National Highway Traffic Safety Administration,

400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:
Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading Standards (UTQGS) set forth procedures for treadwear testing in 49 CFR 575.104(e). The purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers choose among tires based on their relative tread life.

On February 25, 1991, the agency proposed amending the treadwear grading procedures to permit treadwear convoys to consist of front-wheel drive passenger cars and light trucks, vans and multipurpose passenger vehicles (MPVs) (or any combination thereof) (56 FR 7643). At the time of the proposal, the regulations specified that only rear-wheel drive passenger cars could be used in the testing to determine treadwear grades (575.104(e)(1)(iv)). The reason for this limitation was that most vehicles used by consumers were of this type when the regulations were initially issued. Since then, the proportion of the rear-wheel drive and front-wheel drive vehicles has changed radically. Approximately 80 percent of all model year 1989 passengers cars have front-wheel drive. In addition, the overall light duty vehicle fleet includes a steadily increasing percentage of light trucks, vans, and other MPVs. Given these changes, the agency studied the feasibility of using front-wheel drive cars and light trucks, vans and MPVs for treadwear testing. The agency's analysis of data indicated that treadwear rates of tires tested on these vehicles were comparable to the treadwear rates on rear-wheel drive passenger cars. Based on the foregoing, the agency proposed the amendment, believing that it would result in the use of test vehicles that more accurately reflect the types of vehicles being manufactured and would make it easier for test fleet operators to obtain vehicles. The amendment also changes the specified size of the test convoy from "no more than four passenger cars" to either "two or four passenger cars, light trucks, or MPVs."

The agency received no comments to the February proposal. The agency therefore has decided to amend the treadwear convoy requirements, as proposed. Accordingly, front-wheel drive passenger cars and light trucks, vans, and MPVs may be used in treadwear convoys.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days or later than one year from the date the order is issued unless "good cause" is shown that an earlier or later effective date is in the public interest. After evaluating the amendment, NHTSA finds that there is "good cause" for making this final rule effective in less than 180 days because the amendment permits greater flexibility to tire evaluators. Further, it imposes no new requirement on any entity.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has determined that this rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule will have minimal economic impacts. The rule will not impose any significant burdens. Instead, it will provide greater flexibility to treadwear evaluators. This flexibility may result in a slight cost savings if the rule results in evaluators replacing older out-of-production cars with newer, less expensive front-wheel drive ones or more versatile light trucks.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Tire manufacturers typically do not qualify as small entities. While some UTQGS testing organizations may be small entities, the agency does not believe that a substantial number of them are small entities. This amendment will not significantly affect small businesses, small organizations, and small governmental units even to the extent that these entities purchase tires. The preceding section notes the agency's assessment that this amendment will not have any significant cost effect on the industry, and therefore it will not result in a significant change in consumer prices.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that it will have no Federalism implication that warrants preparation of a Federalism report.

National Environmental Policy Act

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR 575.104, Uniform Tire Quality Grading Standards are amended as follows:

1. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended]

2. Section 575.104(e)(1)(iv) is revised to read as follows:

(e) *Treadwear grading conditions and procedures*—(1) *Conditions*.

* * * * *

(iv) A test convoy consists of two or four passenger cars, light trucks, or MPVs, each with a GVWR of 10,000 pounds or less.

* * * * *

Issued on: November 8, 1991.

Jerry Ralph Curry,
Administrator.

[FR Doc. 91-27456 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 910899-1199]

Groundfish Off the Gulf of Alaska

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce (Secretary) extends that part of an emergency interim rule applicable to 50 CFR part 672 from November 12, 1991, through December 31, 1991. This extension addresses the problem of potentially high bycatch rates of Pacific halibut in the groundfish trawl fisheries off Alaska. The extension does not apply to the Bering Sea and Aleutian Islands (BSAI) area, because the emergency measures applicable to that area are no longer needed. The emergency measures continue to be necessary in the Gulf of Alaska (GOA) to constrain Pacific halibut bycatch amounts and facilitate enforcement of trawl closures. This extension is intended to promote the fishery management objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

EFFECTIVE DATE: The amendments to §§ 672.2 and 672.20, published at 56 FR 38349, August 13, 1991, are effective November 12, 1991 through December 31, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-2168.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Secretary implemented an emergency interim rule under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) applicable to the groundfish fisheries in the GOA and in the BSAI area (56 FR 38346; August 13, 1991). That rule was effective from August 7, 1991, through November 12, 1991, and included the following measures:

(1) All trawling for groundfish in the GOA is prohibited when the halibut

prohibited species catch limit or seasonal allowance thereof is reached, except that directed fishing for pollock by vessels using pelagic trawls will be allowed unless otherwise prohibited;

(2) Directed fishing standards are reduced for BSAI Pacific cod and for all GOA groundfish other than pollock that are caught with pelagic trawl gear;

(3) The definition of a fishing trip in the BSAI is amended for purposes of calculating directed fishing standards to provide that a vessel starts a new trip when it enters or leaves a subarea or reporting area to which a directed fishing prohibition applies; and

(4) Vessels must render non-pelagic trawls unusable for fishing when conducting fishing operations in areas closed to the use of non-pelagic trawls for a particular target species category if that vessel retains proportions of that target species category equal to or greater than the applicable directed fishing standard.

At its meeting of September 23-29, 1991, the North Pacific Fishery Management Council (Council) reviewed the conditions warranting the emergency interim rule and recommended that the emergency rule, as effective August 7, 1991, be extended through December 31, 1991.

The Secretary finds that conditions justifying the emergency action in the GOA remain unchanged and concurs in the Council's recommendation. The Secretary has determined that conditions justifying the emergency action in the BSAI area no longer exist, because trawl fisheries that are subject to Pacific halibut bycatch management measures are closed. The Secretary is extending the effectiveness of the emergency interim rule only for the GOA through December 31, 1991, under section 305(c)(3)(B) of the Magnuson Act.

Therefore, effective from November 12, 1991, through December 31, 1991, the following measures remain in effect:

(1) All trawling for groundfish in the GOA is prohibited when the halibut prohibited species catch limit or seasonal allowance thereof is reached, except that directed fishing for pollock by vessels using pelagic trawls will be allowed unless otherwise prohibited;

(2) Directed fishing standards are reduced for all GOA groundfish other than pollock that are caught with pelagic trawl gear; and

(3) Vessels must render non-pelagic trawls unusable for fishing when conducting fishing operations in areas closed to the use of non-pelagic trawls for a particular target species category if that vessel retains proportions of that target species category equal to or greater than the applicable directed fishing standard.

Further background and descriptive information is contained in the preamble of the original emergency interim rule.

Classification

This action is authorized by sections 305(c) of the Magnuson Act and 16 U.S.C. 1855(e).

The extension of the emergency interim rule is exempt from the normal procedures under Executive Order 12291 as provided in section 8(a)(1) of that Order. This action is being reported to the Director of the Office of Management and Budget with an explanation of why following regular procedures of that Order is not practicable.

Lists of Subjects in 50 CFR Part 672

Fisheries, Fishing vessels.

Dated: November 12, 1991.

Michael F. Tillman,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 91-27529 Filed 11-12-91; 1:57 pm]

BILLING CODE 3510-22-M

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 91-035]

RIN 0579-AA42

Random Source Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations under the Animal Welfare Act to require that dogs and cats acquired by (1) pounds and shelters owned and operated by States, counties, and cities, (2) private entities established for the purpose of caring for animals, such as humane societies or contract pounds or shelters, and (3) research facilities licensed by the Department of Agriculture, must be held and cared for at those establishments for at least 5 days before being sold to a dealer. We are also proposing to amend the regulations to require that dealers provide a valid certification to anyone acquiring random source dogs and cats from them. These proposed amendments are being made pursuant to the recent amendment of the Animal Welfare Act, which was enacted to prohibit the use of stolen pets in research and to provide owners the opportunity to locate their animals.

DATES: Consideration will be given only to comments received on or before December 16, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-035. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence

Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act). Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated persons, of animals covered under the Act.

In this document, we are proposing to add new provisions to 9 CFR part 2, Subpart I, regarding the length of time certain pounds, shelters, and research facilities must hold dogs and cats, in accordance with the Act. We are also proposing to add to 9 CFR part 2, Subpart I, provisions requiring certification to accompany random source dogs and cats sold, provided, or made available by dealers to any individual or entity.

Under the Act, the Department is required to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Such standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, recordkeeping, and other matters specified in section 13 of the Act (7 U.S.C. 2143).

In its 1990 amendments to the Act, Congress addressed the issue of stolen dogs and cats that may ultimately be used in research. Congress took a two-pronged approach, amending the Act to add requirements concerning the length of time dogs and cats must be held at specified facilities, and certification for animals transferred by dealers to any

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

individual or entity. We discuss these amendments separately in this supplementary information.

Holding Period

Congress amended the Act to provide that any dog or cat acquired by (1) a State, county, or city owned and operated pound or shelter, (2) a private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis, or (3) a research facility which is licensed by the Department as a dealer, must be held and provided care for at least 5 days before being sold to a dealer. The intent of this amendment is to provide a reasonable period of time for a dog or cat to be either recovered by its original owner or adopted by other individuals (but not transferred to the adopting parties until the holding period is complete), before the dog or cat is sold to a dealer. In order to promote this recovery or adoption, we are proposing to add new §§ 2.133(a)(1) through (a)(3) to subpart I of part 2 of the regulations, to provide that before the entities described above sell dogs or cats to a dealer, they must hold and care for those animals for not less than 5 full days, not including the day of acquisition, and excluding time in transit. We are proposing further to require that this holding period must include a Saturday, in order to provide owners and other individuals the opportunity to recover or adopt such animals on a weekend. Requiring that a Saturday be included in the holding period would be consistent with Congressional intent, as expressed in the legislative history of the amendments to the Act.

Certification

Also included in the 1990 amendments to the Act were requirements for certification to accompany random source dogs and cats that are sold, provided, or otherwise made available by dealers to any individual or entity. (Random source dogs and cats are defined in 9 CFR part 1 as being those obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.) The intent of the 1990 amendments was to prevent

stolen animals from being entered in sales channels. In accordance with these amendments to the Act, we are proposing that specific information, discussed below, must accompany the dog or cat in question.

We are proposing to include the requirements for certification in 9 CFR part 2, subpart I, in paragraphs (b) through (d) of new § 2.133. In this new section, we are proposing to include the provision that a dealer shall not sell, provide, or make available to any individual or entity a random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that indicates that the holding period discussed in this Supplementary Information under the heading "Holding Period" has been met.

The proposed certification would also be required to include the name, address, and USDA license number of the dealer making the certification and the USDA license or registration number of the recipient of the dog or cat if such recipient is licensed or registered. The certification must be signed by both the dealer making it and by the recipient. The certification would be required to include a description of each dog or cat being transferred, including the official Department-approved identification number of the animal. It would also be required to include the name and address of the person, pound, or shelter from which each dog or cat was acquired by the dealer, and an assertion that the person, pound, or shelter was notified that the dog or cat might be used for research or educational purposes. Additionally, the certification would be required to include the date the dealer acquired each dog or cat. Including the date of acquisition would facilitate our tracking reports of stolen animals, and would help us determine whether an animal acquired by a dealer might possibly be an animal reported stolen. In case where the dog or cat was acquired from a pound or shelter, the certification would have to include a statement by the pound or shelter that it met the required holding period. The statement by the pound or shelter would be required to at least describe the animals by their official USDA identification tag numbers, as supplied by the dealer. (Dealers are already required to affix the identification tags to the dogs or cats at the time of acquisition.) The statement could be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired or it could be made separately and attached to the certification later. If made separately, it would be required to

include the same information describing each animal as is required in the certification. A photocopy of the statement would be regarded as a duplicate original. This is necessary because the dealer might not dispose of all of the animals at the same time or to the same person.

The amendments require that "(t)he original certification . . . shall accompany the shipment of a dog or cat to be sold, provided, or otherwise made available by the dealer, and shall be kept and maintained by the research facility for at least one year for enforcement purposes." The purpose of requiring that the original certification accompany the shipment is to facilitate the tracking of random source dogs and cats from their initial acquisition until their acquisition by a research facility. In the simplest case, a dealer would acquire random source dogs or cats from a pound and would sell all of the animals to a research facility in a single transaction. But if the animals were to pass through more than one dealer, each subsequent dealer would be required to make an additional original certification which must accompany shipment. The additional certification would be attached to the prior certification and would not have to describe the animals except by their official identification tag numbers. If a subsequent dealer disposes of only some of the animals covered by a certification, a photocopy of the previous certification (including the initial original certification and any additional certifications) would serve as a duplicate original.

Each dealer who provides or receives a certification would be required to keep a copy and make it available for APHIS inspection for at least 1 year after disposition of the animal. Each research facility which receives a certification would have to keep and make available for APHIS inspection the original of the certification for at least 1 year after disposition of the animal.

We are also proposing that in instances where a research facility transfers a dog or cat to another facility, a copy of the certification, if such certification exists, would be required to accompany the animal transferred. The research facility to which the animal is transferred would be required to keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year after disposition of the animal.

Definition

Definitions of certain terms used in the regulations are included in 9 CFR part 1. In order to clarify the meaning of "pound or shelter" as used in this

proposal, we are proposing to add a definition of "pound or shelter" to the definitions in part 1. A pound or shelter would be defined to mean a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, we have performed an initial Regulatory Flexibility Analysis regarding the potential impact of this proposed rule on small entities.

Holding Period

Under this proposed rule, municipally owned and operated pounds and shelters, humane societies and contract pounds or shelters, and research facilities that sell random source dogs and cats would have to comply with a holding period. Sales of dogs and cats from pounds and shelters are currently prohibited in the following 12 States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Pounds and shelters in these 12 States would, therefore, be unaffected by the proposed regulations. Individual shelters in the remaining 38 States that choose not to make such sales would also be unaffected. Under part 2, subpart C, § 2.38(j) of the Animal Welfare regulations, research facilities are already required to hold of 5 full days dogs or cats that they acquire from sources other than dealers, exhibitors, and exempt persons. The only change from the current regulations in this regard would be the addition of the

requirement that the dogs and cats be held over at least one Saturday.

The total number of pounds and shelters in the United States is estimated by the Humane Society of the United States to be between 3,000 and 5,000. For purposes of the Regulatory Flexibility Act, all of these pounds and shelters would be considered small. For this analysis, it was assumed that approximately 2,200 to 3,800 pounds and shelters in the United States sell dogs and cats to dealers. It is estimated that as many as 80,000 dogs and 50,000 cats may be sold or provided to dealers from these shelters each year. These 2,200 to 3,800 pounds and shelters would be affected by the proposed regulations. The extent of the impact of the proposed regulation on these pounds and shelters would depend on whether the pound or shelter holds dogs and cats at least 5 days, including a Saturday, before selling them to a dealer.

Holding periods for pounds and shelters are currently prescribed by State or local governments and by shelter operators. While it was known that at least one State, Minnesota, requires dogs and cats to be held for 5 days before they can be sold, specific information for other State and local governments was not available. A 3-day average holding period was assumed for this analysis. Therefore, the proposed regulation would require pounds and shelters to hold and care for each dog or cat for an additional 2 to 4 days, in order to hold each animal for 5 days including a Saturday. The daily cost for labor and materials to feed, water, and clean up after each dog or cat was estimated at \$7. The increased cost to each affected pound or shelter for each dog or cat is, therefore, estimated at approximately \$14 to \$28. The increased annual cost for each affected shelter is estimated at approximately \$500 to \$1,700.

The cost increases projected to arise from this proposed regulation would ultimately be borne by taxpayers. Pounds and shelters, whether government owned and operated or contracted for by State, county, or city governments, are providing a public service. As the cost of this public service rises, either taxes would have to be raised or money will have to be taken from other programs.

Certification Requirements

Under this proposed rule, any dealer selling, providing, or making available to any person a random source dog or cat would be required to provide the recipient of the dog or cat with certain certification, as discussed in the supplementary information of this document under the heading,

"Certification." These proposed requirements overlap the current provisions of part 2 of the Animal Welfare regulations. Under the current regulations, dealers are required to enclose a record with each shipment of any dog or cat. This record must contain the following:

1. The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;

2. The official USDA tag number or tattoo assigned to a dog or cat; and

3. A description of the dog or cat.

Dealers are also currently required to maintain records of the following information for each dog or cat:

1. The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

2. The USDA license or registration number of the person if he or she is licensed or registered under the Act;

3. The vehicle license number and state, and the driver's license number and state, and state of the person, if he or she is not licensed or registered under the Act;

4. The date a dog or cat was acquired or disposed of, including by euthanasia;

5. The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle; and

6. The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

Because, as noted above, the proposed certification requirements are comprised in large measure of the information already required, the reporting requirements of this proposed regulation are not expected to increase dealers' costs.

Comments on the Initial Regulatory Flexibility Analysis

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis, as well as on any other aspect of this proposed rule. Comments should be submitted as indicated under "DATES" and "ADDRESSES."

Executive Order 12372

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects

9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

9 CFR Part 2

Adequate veterinary care, Identification of animals, Institutional animal care and use committees, Licensing, Miscellaneous, Records, Registration.

Accordingly, 9 CFR Parts 1 and 2 would be amended as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for Part 1 would continue to read as follows:

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 would be amended by adding, in alphabetical order, a definition of "Pound or shelter" to read as follows:

§ 1.1 Definitions.

* * * * *

Pound or shelter means a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

* * * * *

PART 2—REGULATIONS

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

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. In subpart C, § 2.38, a new paragraph (k)(4) would be added to read as follows:

§ 2.38 Miscellaneous.

(k) *

(4) Each research facility shall comply with the regulations set forth in § 2.133 of subpart I of this part.

3. Part 2, subpart I, would be amended by adding a new § 2.133 to read as follows:

§ 2.133 Certification for random source dogs and cats.

(a) Each of the entities listed in paragraphs (a)(1) through (a)(3) of this section that acquire any live dog or cat shall, before selling the dog or cat to a dealer, hold and care for the dog or cat for a period of not less than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday. The provisions of this paragraph apply to:

(1) Each pound or shelter owned and operated by a State, county, or city;

(2) Each private pound or shelter established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis; and

(3) Each research facility licensed by the Department as a dealer.

(b) A dealer shall not sell, provide, or make available to any person a random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that contains the following information:

(1) The name, address, Department license number, and signature of the dealer;

(2) The name, address, Department license or registration number, if such number exists, and signature of the recipient of the dog or cat;

(3) A description of each dog or cat being sold, provided, or made available that shall include:

(i) The species and breed or type;

(ii) The sex;

(iii) The date of birth or, if unknown, then the approximate age;

(iv) The color and any distinctive markings; and

(v) The official Department-approved identification number of the animal.

However, if the certification is attached to a certificate provided by a prior dealer which contains the required description, then only the official identification numbers are required;

(4) The name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer, and an assurance that the person, pound, or shelter was notified that the cat or dog might be used for research or educational purposes;

(5) The date the dealer acquired the dog or cat from the person, pound, or shelter referred to in paragraph (b)(4) of this section; and

(6) If the dealer acquired the dog or cat from a pound or shelter, a signed statement by the pound or shelter that it met the requirements of paragraph (a) of this section. This statement must at least describe the animals by their official USDA identification numbers. It may be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired from the pound or shelter or it may be made separately and attached to the certification later. If made separately, it must include the same information describing each animal as is required in the certification. A photocopy of the statement will be regarded as a duplicate original.

(c) The original certification required under paragraph (b) of this section shall accompany the shipment of a dog or cat to be sold, provided, or otherwise made available by the dealer.

(d) A dealer who acquires a dog or cat from another dealer must obtain from that dealer the certification required by paragraph (b) of this section and must attach that certification (including any previously attached certification) to the certification which he or she provides pursuant to paragraph (b) of this section (a photocopy of the original certification will be deemed a duplicate original if the dealer does not dispose of all of the animals in a single transaction).

(e) A dealer who provides or receives a certification required under paragraph (b) of this section shall keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year following disposition of the animal.

(f) A research facility which acquires any random source dog or cat from a dealer must obtain the certification required under paragraph (b) of this section and shall keep, maintain, and make available for APHIS inspection the original for at least 1 year following disposition of the animal.

(g) In instances where a research facility transfers a random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the animal transferred. The research facility to which the dog or cat is transferred

shall keep, maintain, and make available for APHIS inspection the copy of the certification for at least 1 year following disposition of the animal.

Done in Washington, DC, this 12 day of November 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-27517 Filed 11-14-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-55-AD]

Airworthiness Directives; Air Tractor Inc. AT-300 and AT-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Air Tractor Inc. AT-300 and AT-400 series airplanes. The proposed action would require initial and repetitive inspections of the wing spar caps for corrosion and repair or replacement if found corroded. Three reports of badly corroded wing spar caps on the affected airplanes have been received. The actions specified by this AD are intended to prevent failure of the wing structure that could result in loss of control of the airplane.

DATES: Comments must be received on or before January 23, 1992.

ADDRESSES: Air Tractor Inc. Service Letter No. 90, dated May 6, 1991, that is discussed in this AD may be obtained from Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; Telephone (817) 564-5616. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-55-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound

Road, Fort Worth, Texas 76193-0150;
Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-55-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Three reports of badly corroded wing spar caps on Air Tractor Inc. AT-300 and AT-400 series airplanes have been received. One of these incidents involved a 1979 model of an AT-301 airplane where the owner noticed a bump on the lower spar cap in the fuel tank area. After removing the inspection plates, extremely deep corrosion was found in several places along the wing lower spar cap. This airplane had not been exposed to fertilizer and had been stored in a hangar when not in operation.

There are certain areas in the wing spar of the affected airplanes where moisture can become entrapped, and may not be detected during regular maintenance inspections. The manufacturer, Air Tractor Inc., has issued Service Letter No. 90, dated May 6, 1991, which specifies initial and repetitive inspections of the wing spar caps for corrosion on certain Air Tractor Inc. AT-300 and AT-400 series airplanes, criteria for repair or

replacement, and instructions for repair if found corroded.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the wing structure that could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Air Tractor Inc. AT-300 and AT-400 series airplanes of the same type design, the proposed AD would require initial and repetitive visual inspections of the wing spar caps for corrosion. If corrosion is found, the proposed action would require repair of the corroded spar cap in accordance with Air Tractor Inc. Service Letter No. 90, dated May 6, 1991, or replacement of the corroded spar cap in accordance with the applicable maintenance manual as defined in the referenced service letter.

The FAA has determined that corrosion can occur on the wing spar caps of the affected airplane regardless of the amount of hours an airplane is in service. Moisture can become entrapped in the wing spar cap and corrosion can form over time. For this reason, the compliance time of the proposed AD would be in calendar time instead of hours time-in-service.

It is estimated that 600 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 hours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$66,000.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules

Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Air Tractor Inc: Docket No. 91-CE-55-AD.

Applicability: Models AT-300, AT-301, and AT-302 airplanes (serial numbers (S/N) 300-0001 through 301-0688); Model AT-400 airplanes (S/N 400-0244 through 400-0415; and Model AT-400A airplanes (all S/N), certificated in any category.

Compliance: Required within the next 90 calendar days after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent failure of the wing structure that could result in loss of control of the airplane, accomplish the following:

(a) Remove the inspection plates on the lower side of the wing leading edge skin, and visually inspect the upper and lower aluminum spar caps from the centerline to outboard end for corrosion using a flashlight and mirror.

(1) If corrosion is found that is equal to or less than the criteria in Air Tractor Inc. Service Letter No. 90, dated May 6, 1991, prior to further flight, repair in accordance with the instructions in Air Tractor Inc. Service Letter No. 90, dated May 6, 1991.

(2) If corrosion is found that is more than the criteria in Air Tractor Inc. Service Letter No. 90, dated May 6, 1991, prior to further flight, replace the wing spar cap in accordance with the applicable maintenance manual.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add

comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 7, 1991.

Lawrence A. Herron,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 91-27476 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-74-AD]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91-12-02, which currently requires initial and repetitive inspections of the engine trusses for cracks at weld joints, repair or replacement of engine trusses found cracked, and the installation of reinforcement doublers on certain Beech Models 1900 and 1900C airplanes. New trusses have been manufactured that would allow for the elimination of the inspection requirements of AD 91-12-02, and the FAA has determined that different repetitive inspection intervals should be established for certain weld joint areas of the engine mounts. The proposed action would retain the requirements of AD 91-12-02, but would change the repetitive inspection intervals and allow the repetitive inspections to be terminated if a certain engine truss was installed. The actions specified by this proposed AD are intended to prevent engine truss failure, which could result in complete loss of the engine from the airplane.

DATES: Comments must be received on or before January 23, 1992.

ADDRESSES: Beech Service Bulletin 2255, Revision III, dated October 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in

triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-74-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-74-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 91-12-02, Amendment 39-7013 (56 FR 23996), currently requires initial and repetitive inspections of the engine trusses for cracks at the weld joints, repair or replacement of engine trusses found cracked, and the installation of reinforcement doublers on certain Beech Models 1900 and 1900C airplanes. Subsequent to the issuance of AD 91-12-02, Beech manufactured improved engine trusses and issued Service Bulletin (SB) No. 2255, Revision III,

dated October 1991, which identifies engine truss retrofit kits, revises existing engine truss visual inspection intervals, removes the recommendation for the magnetic particle inspection, and incorporates installation procedures for reinforcement doublers, which were previously addressed by Beech SB No. 2196.

The FAA has examined the above situation, reviewed all available information related to the circumstances described above, and has determined that further AD action should be taken to establish different repetitive inspection intervals for certain weld joint areas of the engine mounts and to allow for the installation of a new improved engine truss as terminating action for the repetitive inspections that are currently required. Since the condition described is likely to exist or develop in other Beech Models 1900 and 1900C airplanes of the same type design, the proposed AD would retain the requirements of AD 91-12-02, but would change the repetitive inspection intervals and allow the repetitive inspections to be terminated if a certain engine truss was installed. The proposed actions would be accomplished in accordance with Beech Service Bulletin No. 2255, Revision III, dated October 1991. The proposed AD would supersede AD 91-12-02, Amendment 39-7013.

It is estimated that 202 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 19 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$235,125. The above cost analysis is the same as AD 91-12-02, which would be superseded by this proposed action. There would be no additional cost impact on U.S. operators by this proposed action than that which is currently required by AD 91-12-02.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

"ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 91-CE-74-AD.

Applicability: Model 1900 airplanes (serial numbers (S/N) UA-2 and UA-3); and Model 1900C airplanes (S/N UB-1 through UB-74, S/N UC-1 through UC-156, and S/N UD-1 through UD-6), certificated in any category.

Compliance: Required initially upon the accumulation of 1,700 hours time-in-service (TIS), or within the next 100 hours TIS after July 1, 1991 (the effective date of AD 91-12-02), whichever occurs later, unless already accomplished, and thereafter as indicated.

To detect cracks and prevent possible failure of the engine truss assembly, accomplish the following:

(a) If either engine truss, part number (P/N) 118-910025-37 or P/N 118-910025-121 is installed, or if either engine truss P/N 114-910025-1 or P/N 118-910025-1 that is equipped with reinforcement doublers at the engine firewall attachment bosses is installed, inspect the engine truss for cracks at the weld joints in accordance with the instructions in Beech Service Bulletin (SB) 2255, Revision III, dated October 1991.

(1) If no cracks are found, return the airplane to service and visually reinspect the engine truss at the weld joint areas as specified in paragraph (c) of this AD in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991.

(2) If cracks are found, prior to further flight, accomplish one of the following in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991:

(i) Repair the cracked engine truss or replace the cracked engine truss with a serviceable truss, P/N 118-910025-37 or P/N 118-910025-121, and visually reinspect the

engine trusses at the weld joint areas as specified in paragraph (c) of this AD; or

(ii) Replace the cracked engine truss with a new improved engine truss by installing Beech Kit 114-9036-1 or 114-9036-3. This action terminates the need for any repetitive inspections required by this AD.

(b) If either engine truss, P/N 114-910025-1 or P/N 118-910025-1 that is not equipped with reinforcement doublers at the engine firewall attachment bosses is installed, inspect the engine truss for cracks at the weld joints in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991.

(1) If no cracks are found, install reinforcement doublers in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991, and visually reinspect the engine trusses at the weld joint areas as specified in paragraph (c) of this AD in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991.

(2) If cracks are found, prior to further flight, accomplish one of the following in accordance with the instructions in Beech SB No. 2255, Revision III, dated October 1991:

(i) Repair the cracked engine truss, install reinforcement doublers, and visually reinspect the engine trusses at the weld joint areas as specified in paragraph (c) of this AD; or

(ii) Replace the cracked engine truss with a serviceable truss, P/N 118-910025-37 or P/N 118-910025-121, and visually reinspect the engine trusses at the weld joint areas as specified in paragraph (c) of this AD; or

(iii) Replace the cracked engine truss with a new improved engine truss by installing Beech Kit 114-9036-1 or 114-9036-3. This action terminates the need for any repetitive inspections required by this AD.

(c) Accomplish the repetitive inspections required by paragraphs (a)(1), (a)(2)(i), (b)(1), (b)(2)(i), or (b)(2)(ii) of this AD at the intervals specified below at the areas specified in Figure 1: Engine Truss Inspection Areas of Beech SB No. 2255, Revision III, dated October 1991:

Inspection area	Inspection interval—hours (TIS)
A.....	300
B.....	600
C.....	3,000

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft

Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 91-12-02, Amendment 39-7013.

Issued in Kansas City, Missouri, on November 6, 1991.

Lawrence A. Herron,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27477 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-49-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would have required inspection and modification of the emergency escape system packboard assemblies. That proposal was prompted by reports of emergency escape systems not releasing from the door. This condition, if not corrected, could result in the emergency escape system not being available for emergency evacuation or the exit not being usable. This action revises the proposed rule by including a requirement to inspect the hook connector for proper fit, and replace it, if necessary.

DATES: Comments must be received no later than December 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-49-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Jayson Claar, Seattle Aircraft

Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-49-AD." The post card will be date stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations applicable to certain Boeing Model 747 series airplanes which would have required inspection and modification of the emergency escape system packboard assemblies, was published in the *Federal Register* on April 8, 1991 (56 FR 14220). That action was prompted by reports of emergency escape systems not releasing from the door. This condition, if not corrected, could result in the emergency escape system not being available for emergency evacuation or the exit not being usable.

Since the issuance of that proposal, one operator reported difficulty when attempting to accomplish the required modification of the packboard and cover assembly. The operator discovered a retention problem with the pin that is press-fit into the hook connectors involved as part of the modification; the

operator was not able to obtain proper "interference fit" between the pin and the hook connector installed. In order for proper fit to be maintained and the modification to be completed, it was necessary to replace the hook connector.

The FAA further investigated the reported problem, and the airplane manufacturer confirmed that the problem may exist on any of the airplanes affected by this AD action.

The FAA has reviewed and approved Revision 2 of Boeing Service Bulletin 747-25-2807, dated August 22, 1991, which describes procedures for the inspection and modification of the packboard release shaft assembly. Revision 2 includes procedures for conducting an inspection to determine the interference fit between the pin and the hook connector, and procedures for replacing the hook connector, if necessary.

Additionally, since issuance of the original Notice, the manufacturer has advised the FAA that a parts availability problem may exist with regards to the modification parts required by the proposed AD action: an ample number of parts may not be available within the proposed 90-day compliance period. The manufacturer has advised that at least an additional 30 days may be required in order for a sufficient number of parts to be available to affected operators.

In light of this new data, the FAA has determined that the proposed rule must be revised to include a requirement to inspect the pin and hook connector interference, and replace the hook connector, if necessary. Although this inspection is not directly specified in the rule, it is required as part of the modification requirements that would now be required in accordance with Boeing Service Bulletin 747-25-2807, Revision 2, dated August 22, 1991.

Additionally, the FAA has determined that the proposed compliance time of paragraph (a) of the rule may be extended from the originally proposed 90 days to 120 days in order to allow time for the necessary modification parts to become available to affected operators. Such an extension in the compliance time would not adversely impact safety.

Since these new proposed requirements go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for the public to comment.

The paragraph designations of this Supplemental NPRM have been revised to be consistent with the standard *Federal Register* style.

There are approximately 74 Model 747 series airplanes of the affected design in the worldwide fleet. The following table lists the approximate number of U.S.-registered airplanes that would be affected by this AD, and gives an estimate of the number of manhours that it would take to accomplish each of the proposed actions. The required modification parts are available from the manufacturer at no charge to operators.

Required action	No. of airplanes	Manhours per airplane
Inspection...	16	30
(Boeing Alert Service Bulletin 747-25A2889)		
Modification...	16	200
(Boeing Alert Service Bulletin 747-25A2889)		
Modification...	10	50
(Boeing Service Bulletin 747-25-2807, Revision 2)		

The average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$229,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91-NM-49-AD.

Applicability: Model 747 series airplanes, line number 696 and subsequent; equipped with evacuation system packboards and cover assemblies identified in the Boeing Service Bulletins 747-25-2807, Revision 2, dated August 22, 1991, and 747-25A2889, dated November 1, 1990; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To provide satisfactory reliability of the evacuation system, accomplish the following:

(a) For evacuation system packboard and cover assemblies identified in either Boeing Service Bulletin 747-25-2807, Revision 2, dated August 22, 1991, or Boeing Alert Service Bulletin 747-25A2889, dated November 1, 1990: Within the next 120 days after the effective date of this AD, inspect the evacuation system packboard and cover assemblies in accordance with Part III, "Accomplishment Instructions," Paragraph B., of Boeing Alert Service Bulletin 747-25A2889, dated November 1, 1990.

(1) If the inspection reveals that the angle measured is 155 degrees or greater, prior to further flight, modify the packboard and cover assemblies in accordance with Boeing Alert Service Bulletin 747-25A2889, dated November 1, 1990, and Boeing Service Bulletin 747-25-2807, Revision 2, dated August 22, 1991, as applicable.

(2) If the inspection reveals that the angle measured is less than 155 degrees, within the next 12 months after the effective date of this AD, modify the packboard and cover assemblies in accordance with Boeing Alert Service Bulletin 747-25A2889, dated November 1, 1990, and Boeing Service Bulletin 747-25-2807, Revision 2, dated August 22, 1991, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27478 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-181-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes which would have superseded an existing AD, to require inspection for cracks in the fuselage body station (BS) 1241 bulkhead splice strap and forging, and repairs, if necessary. That proposal was prompted by a structural review of the Model 747 series airplanes which indicated that inspection of this area of the airplane is necessary in order to ensure the structural integrity of the airplane. This action revises the proposed rule by clarifying the inspection and repair requirements and which airplanes they relate to, and by deleting the inspection and re-inspection interval adjustment factor that would have been provided for Model 747SR airplanes. The requirements of this proposed rule are intended to prevent failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability of the airplane to withstand fail-safe loads.

DATES: Comments must be received no later than December 18, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-181-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-181-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to supersede AD 88-16-01, Amendment 39-5983 (53 FR 27479, July 21, 1988), applicable to Boeing Model 747 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on October 11, 1990 (55 FR 41341). AD 88-16-01 currently requires inspections for cracks in the fuselage body station (BS) 1241 bulkhead splice strap and forging, and repairs, if necessary. The NPRM would have continued to require these inspections; however, it also would have required that, once an airplane has accumulated 20,000 cycles or more: (1) The inspections be conducted at more frequent intervals in order to detect fatigue cracking (the result of cyclic loading) in a more timely manner, and

(2) cracked splice straps be replaced in order to ensure the structural integrity of the BS 1241 bulkhead splice throughout the operational life of the airplane. Failure to detect and repair cracks in the fuselage BS 1241 bulkhead splice strap and forging could lead to loss of cabin pressure or the inability of the fuselage to withstand fail-safe loads.

In response to that NPRM, numerous commenters requested that the FAA clarify the proposed rule to specify exactly which inspection and repair requirements are applicable to which airplane configurations. Upon further review, the FAA concurs that, as stated in the proposal, the intent of the requirements may not be explicit. Therefore, the proposed rule has been completely revised as follows:

Paragraph (a) has been revised to clarify that it applies only to airplanes in Groups 1 through 8 (as defined in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989) that are in the original production configuration and have not had replacement bulkhead splice straps installed. This paragraph would require repetitive eddy current inspections of the bulkhead splice strap at the aft hole and visual inspections of the aft edge of the strap; if cracking is found during these inspections, eddy current inspections of the splice strap and forging at the adjacent forward hole would be required to be performed. The repair of cracks in the forward hole of the original bulkhead splice strap (modified or unmodified) that are within specified limits would be permitted to be deferred for a certain period of time, during which time the inspections would be required at shorter intervals. However, all cracks in the forging would be required to be repaired immediately (prior to further flight).

New paragraph (b) applies only to airplanes in Groups 9 through 18 that have not had replacement bulkhead splice straps installed, but have been improved from the original production configuration of Groups 1 through 8. This paragraph would require repetitive eddy current inspections for cracks in the aft edge, aft hole, or forward hole of the bulkhead splice strap. Rework of the forward bolt hole is not an option for airplanes in this configuration because the previous improvement included rework of the bulkhead forging. Repair of cracks found only in the splice strap when inspecting the forward hole may be deferred as long as the inspections are continued at more frequent intervals. All cracks in the bulkhead forging would be required to be repaired immediately.

New paragraph (c) applies to all airplanes that have had replacement

bulkhead splice straps installed. This paragraph "credits" the airplanes in Groups 1 through 18 for having installed a replacement bulkhead splice strap, by deferring the initial inspection for up to 10,000 landings following replacement of the bulkhead splice strap. Cracks in bulkhead splice straps that previously had been replaced would be required to be repaired immediately.

New paragraph (d) applies to all airplanes that have accumulated 20,000 or more landings on the bulkhead splice strap. It would require that repetitive eddy current or ultrasonic inspections of the splice strap and bulkhead forging be conducted at 3,000-landing intervals. Cracks found in an unmodified bulkhead splice strap would require replacement of the strap, although replacement may be deferred for certain periods of time. Cracks found in a modified or replacement splice strap would require replacement of the strap immediately.

The requirements of this supplemental NPRM would not supersede the modifications required by AD 90-06-06, Amendment 39-6490 (55 FR 8374, March 7, 1990). That AD requires modification of the forward and aft bolt holes in the bulkhead splice strap and replacement of any previously cracked strap on airplanes that had accumulated more than 20,000 landings. AD 90-06-06 does not require any inspections, whereas, this supplemental NPRM would require inspections both before and after the modification required by AD 90-06-06 is accomplished.

One commenter, a foreign operator, requested that the proposed adjustment factor of 1.2 for Model 747SR airplanes (specified in paragraph F. of the initial NPRM), be revised to a 1.3 adjustment factor for the inspection thresholds and 1.5 adjustment factor for the repetitive inspection intervals. The FAA does not concur. At the time the provision for the 1.2 adjustment factor was developed, only this one operator was operating Model 747SR airplanes; the adjustment factor was based on this operator's operations at reduced pressurization. The 1.3 and 1.5 increments were suggested based on generally reduced gross weights utilized by this one operator during its operations. Model 747SR airplanes are no longer operated exclusively by this one foreign operator, however, and are currently utilized by several other operators as long-range freighters. To date, however, there are no associated FAA-approved Airplane Flight Manual (AFM) limitations that restrict the gross weight of these airplanes to ensure adherence to the intention of the 1.3 and 1.5 adjustment factors. In light of this, the FAA cannot accept categorically the suggested

additional adjustment factors. The FAA has further determined that the 1.2 adjustment factor is inappropriate since it was selected based on the operations of a single Model 747SR operator. Since Model 747SR airplanes are currently being operated by more than one operator, the FAA has determined that it would be more appropriate to review the applicability of the 1.2 adjustment factor to each individual operator's maintenance program on a case-by-case basis. Accordingly, proposed paragraph F., which appeared in the original NPRM and related to this subject, has been deleted from this supplemental NPRM. The FAA will consider any necessary adjustment factors under the alternative method of compliance provisions of paragraph (e) of the supplemental NPRM.

Since the changes described above expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

The format of this supplemental NPRM has been restructured to be consistent with the standard Federal Register style.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from \$40 per manhour (as was cited in the preamble to the Notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

There are approximately 689 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry would be affected by this AD, that it would take approximately 104 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$995,280.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Amendment 39-5983 and by adding the following new airworthiness directive:

Boeing: Docket No. 90-NM-181-AD.

Supersedes AD 88-16-01, Amendment 39-5983.

Applicability: Model 747 series airplanes listed in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, certified in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 1241 bulkhead forging, which could lead to loss of cabin pressure or the inability of the airplane to withstand fail-safe loads, accomplish the following:

(a) For airplanes Group 1 through Group 8 (as defined in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989) on which a replacement bulkhead splice strap has not been incorporated in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, accomplish the following:

(1) Perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap in accordance with the service bulletin at the later of the following times, unless previously accomplished within the last 6,000 landings:

(i) Within the next 1,000 landings after the effective date of this AD, or

(ii) Prior to the accumulation of 10,000 total airplane landings.

(2) If no crack is found, repeat the inspections required by paragraph (a)(1) of this AD thereafter at intervals not to exceed 7,000 landings.

(3) If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead splice strap and forging at the adjacent forward hole, in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

(i) If no crack is found or if a crack is found only in the bulkhead splice strap, repeat the inspection required by paragraph (a)(3) of this AD at the forward hole thereafter at intervals not to exceed 3,000 landings.

(ii) If a crack is found in the bulkhead forging, repair as follows:

(A) If the crack found in the forward hole of the forging does not exceed the forward hole rework limits specified in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, and the forward hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin, and continue to reinspect in accordance with paragraph (a)(3) of this AD at intervals not to exceed 3,000 landings.

(B) If the crack found in the forging exceeds the forward hole rework limits, or if the hole coldwork has been previously accomplished, prior to further flight, repair in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(b) For airplanes Group 9 through Group 18 (as defined in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989) on which a replacement bulkhead splice strap has not been incorporated in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, accomplish the following:

(1) Perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap at the later of the following times, unless previously accomplished within the last 6,000 landings:

(i) Within the next 1,000 landings after the effective date of this AD, or

(ii) Prior to the accumulation of 10,000 total landings.

(2) If no crack is found, repeat the inspections required by paragraph (b)(1) of this AD at intervals not to exceed 7,000 landings.

(3) If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead splice strap and forging at the adjacent forward hole, in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989.

(i) If no crack is found or if a crack is found only in the bulkhead splice strap when inspecting the forward hole, repeat the inspections required by paragraph (b)(3) of this AD at the forward hole thereafter at intervals not to exceed 3,000 landings.

(ii) If a crack is found in the bulkhead forging, prior to further flight, repair in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(c) For airplanes Group 1 through Group 18 on which a replacement bulkhead splice

strap has been incorporated in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, accomplish the following:

(1) Perform an eddy current inspection to detect cracks in accordance with the service bulletin at the later of the following times, unless previously accomplished within the last 9,000 landings:

(i) Within 1,000 landings after the effective date of this AD, or

(ii) Prior to the accumulation of 10,000 landings after the replacement of the bulkhead splice strap.

(2) Repair all cracks prior to further flight, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) For airplanes Group 1 through Group 18, accomplish the following. Except as provided by paragraph (d)(4) of this AD, compliance with this paragraph constitutes terminating action for the inspections required by paragraphs (a) through (c) of this AD.

(1) Perform an eddy current inspection or ultrasonic inspections (as applicable and as specified in the service bulletin) of the forward and aft holes to detect cracking in the splice strap and bulkhead forging, in accordance with the "Aging Fleet Flight-Safety Inspection Program" specified in Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, at the later of the following times, unless previously accomplished within the last 2,000 landings:

(i) Prior to the accumulation of 20,000 landings on any unmodified, or modified bulkhead splice strap; or

(ii) Prior to the accumulation of 20,000 landings after replacement of the bulkhead splice strap; or

(iii) Within the next 1,000 landings after the effective date of this AD.

(2) If no crack is found in the bulkhead splice strap or bulkhead forging, repeat the inspection required by paragraph (d)(1) of this AD thereafter at intervals not to exceed 3,000 landings.

(3) If a crack is found in a bulkhead splice strap not yet modified in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, replace the bulkhead splice strap in accordance with the service bulletin within the next 4 years after April 17, 1990 (the effective date of AD 90-08-06); or prior to the accumulation of 20,000 total airplane landings; or within 2 years after crack discovery; whichever occurs latest. If a crack is found in the bulkhead forging, prior to further flight, repair in accordance with the service bulletin. Repeat the inspections required by paragraph (d)(1) of this AD thereafter at intervals not to exceed 3,000 landings.

(4) If a crack is found in a modified or replacement bulkhead splice strap or bulkhead forging, prior to further flight, replace the bulkhead splice strap in accordance with Boeing Alert Service Bulletin 747-53A2283, Revision 3, dated November 1, 1989, and continue to reinspect in accordance with paragraphs (c) and (d) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27479 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-186-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which currently requires a one-time inspection of the engines' nacelle strut firewall duct assemblies for proper application of firewall sealant. This action would expand the applicability of the existing AD to add additional affected airplanes. This proposal is prompted by information from the manufacturer which indicates that the firewall sealant apparently was not applied properly during production on 141 additional airplanes. This condition, if not corrected, could compromise the integrity of the engines' nacelle strut firewall seal.

DATES: Comments must be received no later than January 6, 1992.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-186-AD, 1601 Lind Avenue SW., Renton,

Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-186-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 30, 1990, the FAA issued AD 90-08-08, Amendment 39-6572 (55 FR 13259, April 10, 1990), applicable to certain Model 737-300 series airplanes, to require a one-time inspection of the engines' nacelle strut firewall duct assemblies for proper application of firewall sealant. That action was prompted by a manufacturer's production report that firewall sealant may not have been applied to all the mating surfaces of the engines' nacelle

strut firewall door assemblies. This condition, if not corrected, could compromise the integrity of the engines' nacelle strut firewall seal.

Since issuance of that AD, the FAA has been advised that the firewall sealant apparently was not applied properly during production on 141 additional airplanes. In light of this, the FAA has determined that these additional airplanes are subject to the same unsafe condition addressed in the existing AD.

The FAA has reviewed and approved Boeing Service Bulletin 737-54-1028, Revision I, dated July 11, 1991, which provides instructions for the inspection of the engines' nacelle strut firewall door assemblies for proper application of the firewall sealant and application of sealant, if necessary.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would supersede AD 90-08-08 with a new airworthiness directive that would require that additional airplanes (91 U.S.-registered airplanes) be inspected for proper application of firewall sealant, in accordance with the service bulletin previously described.

There are approximately 349 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that a total of 202 airplanes of U.S. registry would be affected by this AD; of this number, 91 airplanes are affected directly by this supersedure action. It would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$22,220.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6572 and by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-186-AD.

Supersedes AD 90-08-08; Amendment 39-6572.

Applicability: Model 737-300 series airplanes, listed in Boeing Service Bulletin 737-54-1028, Revision 1, dated July 11, 1991, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To ensure the integrity of the engines' nacelle strut firewall seal, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 737-54-1028, dated August 17, 1989; At the next scheduled engine removal, or within 8,000 flight hours after May 14, 1990 (the effective date of AD 90-08-08, Amendment 39-6572), which ever occurs sooner, inspect the engines' nacelle strut door assemblies for proper application of firewall sealant in accordance with Boeing Service Bulletin 737-54-1028, dated August 17, 1989, or Revision 1, dated July 11, 1991. The door assemblies are located between nacelle station 200.00 and 235.00 and attached to the underside of the strut and spar web at approximately nacelle waterline 132.00. If there are gaps, holes, or voids in the firewall sealant, apply sealant prior to further flight, in accordance with the service bulletin.

(b) For airplanes listed in Boeing Service Bulletin 737-54-1028, Revision 1, dated July 11, 1991, that are not subject to paragraph (a) of this AD: At next scheduled engine removal or within 8,000 flight hours after the effective date of this AD, which ever occurs sooner, inspect the engines' nacelle strut door assemblies for proper application of firewall sealant in accordance with Boeing Service Bulletin 737-54-1028, Revision 1, dated July 11, 1991. The door assemblies are located between nacelle station 200.00 and 235.00 and attached to the underside of the strut and spar web at approximately nacelle waterline 132.00. If there are gaps, holes, or voids in the firewall sealant, apply sealant prior to further

flight, in accordance with the previously described service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27480 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-13-M

should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-3-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 848 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, January 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-27516 Filed 11-12-91; 12:48 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-3-91]

RIN 1545-AQ14

Amortization of Policy Acquisition Expenses of Insurance Companies; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes.

DATES: The public hearing will be held on Friday, January 31, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, January 17, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments

Capitalization of Certain Policy Acquisition Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes. This requirement was enacted as part of the Revenue Reconciliation Act of 1990. These regulations are necessary to provide guidance to insurance companies that must comply with the capitalization requirement.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for Friday, January 31, 1992, beginning at 10 a.m., must be received by January 17, 1992. See the notice of hearing published elsewhere in this issue of the *Federal Register*.

ADDRESSES: Send comments, requests to appear at the public hearing and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-3-91) room 5228, Washington DC 20044. Comments and requests may be hand delivered to: CC:CORP:T:R, Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gary Geisler, 202-566-3478 (not a toll-free number). Concerning the hearing, Carol Savage of the Regulations Unit, 202-377-9236 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information requirement in this notice of proposed rulemaking is in § 1.848-2(f)(7). This information is required by the Internal Revenue Service to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and

the reinsurer. The likely recordkeepers are insurance companies.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual recordkeeping burden: 2,000 hours. Estimated average annual burden per respondent: 1 hr. Estimated number of respondents and/or recordkeepers: 2,000.

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 848 of the Internal Revenue Code, relating to the capitalization of certain policy acquisition expenses of insurance companies. Section 848 was added to the Code by section 11301(a) of the Revenue Reconciliation Act of 1990, Public Law No. 101-508.

Explanation of Provisions

Section 848 provides that insurance companies must capitalize "specified policy acquisition expenses." In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize as specified policy acquisition expenses an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. These capitalized amounts are called "specified policy acquisition expenses." The maximum amount of specified policy acquisition expenses required to be capitalized in any year is limited to the insurance company's "general deductions" for the year.

Under section 848(c), the amount treated as specified policy acquisition expenses depends on whether the particular insurance contract is classified as an annuity contract, a group life insurance contract, or other "specified insurance contract." Section 848(e)(1)(A) defines the term "specified insurance contract" as any "life insurance, annuity, or noncancelable accident and health insurance contract (or any combination thereof)." Proposed § 1.848-1 contains the definitions of these basic terms that are used for purposes of section 848.

Definition of Group Life Insurance

To be treated as a group life insurance contract for purposes of section 848, a contract must cover a group of individuals that satisfies an affiliation

requirement; that is, the contract must cover "a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor." Section 848(e)(2)(A). Section 1.848-1(h)(2) of the proposed regulations specifies the types of groups that satisfy the affiliation requirement: An employee group, a debtor group, a labor union group, a credit union group, or an association group satisfying certain conditions. Although a group that satisfies the affiliation requirement of the proposed regulations generally would be treated as a group under the Group Life Insurance Definition and Group Life Insurance Standard Provisions Model Act approved by the National Association of Insurance Commissioners, the proposed regulations do not incorporate the Model Act's definition of groups. Thus, a group that might be treated as a discretionary group under the Model Act would not necessarily qualify as a group under the proposed regulations.

A further requirement applicable to a group life insurance contract is that the premiums for the contract must be determined on a group basis. Under proposed § 1.848-1(h)(3)(ii), all members of the group generally must be eligible for the insurance coverage provided under the contract without regard to evidence of insurability. There are two exceptions to this general rule. First, in the case of a contract that provides only group term life insurance without cash surrender value, coverage may be denied or limited based on the member's response to a permissible medical questionnaire (but not on any other basis, such as a medical examination). Secondly, an insurance company may deny or limit coverage to any member of the group based on a medical examination, responses to a medical questionnaire, or any other evidence of insurability provided that the company obtained this evidence from the member or the member's doctor prior to January 1, 1993. In addition, under proposed § 1.848-1(h)(2)(iii), the only permissible differences in premiums charged to members are those that reflect distinctions based on the member's actual age (in years), the member's gender, or the member's smoking habits. If an insurance company's underwriting of the contract is not in conformity with the above requirements, the premiums on the contract are not premiums for a group life insurance contract for purposes of section 848.

Definition of Net Premiums

Section 848(d)(1) provides that, with respect to each category of specified

insurance contracts, net premiums equal the excess, if any, of the gross amount of premiums and other consideration for the contracts, over the sum of return premiums and premiums incurred for the reinsurance of the contracts.

Proposed § 1.848-2(b) generally defines the term "gross amount of premiums and other consideration" broadly. Thus, under § 1.848-2(b)(4) of the proposed regulations, if an insurance or annuity contract is exchanged for a specified insurance contract, the insurance company must include the fair market value of the contract issued in the exchange in its gross amount of premiums and other consideration for the issuance of a new specified insurance contract. This rule applies whether the exchange is initiated by a policyholder or by an insurance company. Under the proposed regulations, however, the Commissioner may waive the application of this requirement if the exchange results from a change in the terms of a contract approved by a court supervising the rehabilitation or liquidation of an insolvent insurance company. The waiver may be subject to any conditions that the Commissioner may prescribe.

Proposed § 1.848-2(b)(3) states that an amount deposited with an insurance company is not treated as a premium until it is applied to, or irrevocably committed to, the payment of premiums on a specified insurance contract. Payments made to an insurance company pursuant to a retired lives reserve arrangement are treated as irrevocably committed to the payment of premiums.

Proposed § 1.848-2(b)(5) states that deferred and uncollected premiums are not included in gross premiums and other consideration. These amounts are excluded because these items and the associated expenses have not accrued for tax purposes.

Section 848(d)(3) excludes from the gross amount of premiums and other consideration certain policyholder dividends and similar amounts that, under section 808(e), are treated as paid to the policyholder and returned to the insurance company as a premium. In drafting the proposed regulations, consideration was given to an "inside the company" rule under which all amounts retained by the insurance company would be excluded from net premiums. Based on the legislative history, it was determined that section 848(d)(3) was intended to apply only to amounts in an insurance contract which are used to purchase related benefits under the same contract. Thus, proposed § 1.848-2(c) excludes from the gross amount of premiums and other

consideration amounts that are applied to increase benefits or reduce the premiums otherwise required to be paid on the same contract that generated the policyholder dividend. In addition, amounts applied as a result of the exercise of a settlement option under a contract are excluded from the gross amount of premiums and other consideration.

Reinsurance

The capitalization rules of section 848 apply to reinsurance agreements. Under section 848(d)(1), the ceding company reduces its gross amount of premiums and other consideration by the amount that it incurs as premiums for reinsurance. Correspondingly, the reinsurer includes the reinsurance premiums in its gross amount of premiums and other consideration.

Congress evidenced a concern that companies would engage in reinsurance transactions to avoid the impact of section 848. Section 848(d)(4) contains two anti-abuse rules that apply to reinsurance. The first rule, contained in section 848(d)(4)(A), prevents the avoidance of the capitalization requirement when a United States insurer pays premiums to a reinsurer that is not subject to United States tax on its reinsurance income. The second anti-abuse rule, contained in section 848(d)(4)(B), authorizes the Treasury Department to prescribe regulations to ensure that "premiums and other consideration with respect to reinsurance" are treated consistently by the parties for purposes of applying the provisions of section 848. In discussing this grant of regulatory authority, the Conference Committee report states "(t)he conferees intend that taxpayers who are parties to a reinsurance agreement treat amounts payable under the agreement consistently in determining net premiums under the amortization provision. * * * The conferees strongly encourage the Treasury Department to provide rules for determining such consistent treatment. It is intended that such rules state what amounts are to be taken into account as premiums and other consideration by ceding companies and reinsurers (including under retrocessions), rather than merely requiring consistency." H.R. Conf. Rep. 101-964, 101st Cong., 2d Sess. 1068 (emphasis added).

Accordingly, the proposed regulations identify the amounts that are to be taken into account in determining the parties' premiums and other consideration. Under proposed § 1.848-2(e), all items of consideration exchanged by a ceding company and a reinsurer pursuant to a

reinsurance agreement are netted together. The net negative consideration determined by a party to a reinsurance agreement reduces its net premiums. The net positive consideration determined by the other party to the reinsurance agreement increases its net premiums. The determination of net consideration in the proposed regulations ensures consistency between the parties. This consistency extends to the amount and timing, as well as the character of items. Proposed § 1.848-4(e)(4) requires both parties to take an item into account for the first year for which either party would ordinarily take it into account. As a result, the parties are obligated to treat amounts transferred pursuant to a reinsurance agreement in a consistent fashion, in accordance with the expressed intent of the Conference Committee.

The proposed regulations also address a second problem that may arise in reinsurance transactions. The capitalization requirements of section 848 could be avoided if, for example, a primary insurer reinsurance its business with a reinsurer whose general deductions are disproportionately small. This type of transaction is addressed in proposed § 1.848-2(f), which prevents the use of a reinsurance agreement to reduce the amount to be capitalized as specified policy acquisition expenses. If the party to the reinsurance agreement that has net positive consideration has general deductions in an amount that limits the specified policy acquisition expenses it would otherwise be required to capitalize, the other party cannot reduce its net premiums by the full amount of the net negative consideration. Under proposed § 1.848-2(f)(7), however, this rule will not apply if both parties to the reinsurance agreement elect to determine the respective amounts that they must capitalize without regard to the general deductions limitation.

This provision is included in the proposed regulations to ensure, in accordance with section 848(d)(4)(B), that premiums and other consideration in a reinsurance agreement are capitalized in a consistent fashion and to provide the parties to a reinsurance agreement with certainty as to the tax treatment of the items. This proposed regulation is also issued under the authority of section 845(b), which applies to reinsurance agreements having a significant tax avoidance effect on any party to the agreement. The legislative history to section 848 indicates that the Internal Revenue Service should exercise its regulatory

authority under both section 848 and section 845(b) "to make adjustments that are necessary to reflect properly the income of any person that is a party to a reinsurance agreement." H. Rep. No. 101-881, 101st Cong., 2d Sess. 304. Given both the significant potential for avoidance of the capitalization requirements and the express directive in the legislative history to use the authority of section 845(b), the exercise of the authority granted in section 845(b) was determined to be warranted.

Effective Dates and Interim Rules

Proposed § 1.848-4 sets forth effective dates for the foregoing provisions. Except as otherwise provided in proposed § 1.848-4, the regulations under section 848 are generally effective for taxable years beginning after November 15, 1991. Proposed § 1.848-2(e), which specifies the amounts included in premiums and other consideration for reinsurance, applies to all amounts arising under any reinsurance agreement for taxable years beginning after December 31, 1991. Proposed § 1.848-3 provides interim rules for the treatment of amounts arising under a reinsurance agreement for taxable years beginning before January 1, 1992. Proposed § 1.848-2(f), which provides rules to ensure consistency of capitalization for reinsurance agreements, applies with respect to (1) amounts arising under a reinsurance agreement executed on or after November 15, 1991 for all taxable years, and (2) amounts arising under any reinsurance agreement for taxable years beginning after December 31, 1991.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal

Revenue Service. A hearing with respect to these proposed regulations will be held on Thursday, January 31, 1992, beginning at 10 a.m. Written comments and requests to speak (with outlines of oral comments) must be received by January 17, 1992. See notice of hearing published elsewhere in this issue of the *Federal Register*.

Comments are specifically requested on: (1) Whether the categories of groups recognized for purposes of the group life insurance definition should be expanded to include discretionary groups; (2) whether, and in what circumstances, the proposed treatment of exchanges of insurance contracts (initiated by either a policyholder or the company) would require that the insurance company to capitalize excessive amounts; (3) whether, and in what circumstances, a duplication or omission of net premiums may result under the proposed treatment of premiums and other consideration for reinsurance; (4) whether special rules should be provided to ensure consistency of treatment of reinsurance premiums in cases in which the ceding company and the reinsurer have different taxable years; (5) how changes to the proposed regulations could ease the burden of complying with the regulations without creating undue tax avoidance opportunities; and (6) how section 848 should apply to reinsurance agreements undertaken incident to different non-recognition transactions.

All comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these proposed regulations is Gary Geisler, Office of the Assistant Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.801-1 through 1.860-5

Income taxes, Insurance companies, Reporting and recordkeeping.

Proposed Amendments to the Regulations

Accordingly, title 26, part 1, of the Code of Federal Regulations is proposed to be amended as follows:

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Section 1.848-2 also issued under 26 U.S.C. 845(b) and 26 U.S.C. 848(d)(4)(B).

Section 1.848-3 also issued under 26 U.S.C. 848(d)(4)(B).

Par. 2. New §§ 1.848-0, 1.848-1, 1.848-2, 1.848-3, and 1.848-4 are added as set forth below.

Section 1.848-0 Outline of regulations under section 848.

This section lists the paragraphs in §§ 1.848-1 through 1.848-4.

Section 1.848-1 Definitions and special provisions.

- (a) Scope.
- (b) Specified insurance contract.
- (1) In general.
- (2) Exceptions.
- (c) Life insurance contract.
- (d) Annuity contract.
- (e) Noncancelable accident and health insurance contract.
- (f) Guaranteed renewable accident and health insurance contract.
- (g) Combination contract.
- (h) Group life insurance contract.
- (1) In general.
- (2) Group affiliation requirement.
- (i) In general.
- (ii) Employee group.
- (iii) Debtor group.
- (iv) Labor union group.
- (v) Association group.
- (vi) Credit union group.
- (vii) Multiple group.
- (viii) Class or classes of a group determined without regard to individual health characteristics.
- (3) Premiums determined on a group basis.
- (i) In general.
- (ii) Eligibility requirement.
- (A) In general.
- (B) Exception for group term life insurance without cash surrender value.
- (C) Exception for evidence of insurability obtained before January 1, 1993.
- (iii) Identical premium requirement.
- (A) In general.
- (B) Flexible premium contracts.
- (iv) Disqualification of group.
- (4) Supplemental life insurance coverage.
- (5) Special rules relating to the payment of proceeds.
- (i) Contracts issued to a welfare benefit fund.
- (ii) Credit life insurance contracts.
- (i) General deductions.

Section 1.848-2 Determination of net premiums.

- (a) Net premiums.
- (b) Gross amount of premiums and other consideration.
- (1) General rule.
- (2) Items included.
- (3) Treatment of premium deposits.
- (i) In general.
- (ii) Amounts irrevocably committed to the payment of premiums.
- (iii) Retired lives reserves.
- (4) Exchanges of contracts.
- (i) In general.

- (ii) Waiver for companies in rehabilitation proceedings.
- (5) Deferred and uncollected premiums.
- (c) Amounts excluded from the gross amount of premiums and other consideration.
- (1) In general.
- (2) Dividend accumulations.
- (d) Return premiums.
- (e) Net consideration for a reinsurance agreement.
- (1) In general.
- (2) Net consideration determined by a ceding company.
- (3) Net consideration determined by the reinsurer.
- (4) Timing consistency required.
- (5) Modified coinsurance and funds withheld reinsurance agreements.
- (i) In general.
- (ii) Examples.
- (6) Treatment of retrocessions.
- (7) Mixed reinsurance agreements.
- (8) Waiver for companies in rehabilitation proceedings.
- (f) Reduction to ensure consistency of capitalization for reinsurance agreements.
- (1) In general.
- (2) Amount of reduction.
- (3) Capitalization shortfall.
- (4) Required capitalization amount.
- (i) In general.
- (ii) Presumptions with respect to net negative consideration.
- (5) General deductions allocable to reinsurance agreements.
- (6) Allocation of capitalization shortfall among reinsurance agreements.
- (7) Election to capitalize specified policy acquisition expenses without regard to general deductions limitation.
- (i) In general.
- (ii) Manner of making election.
- (iii) Election statement.
- (iv) Effect of election.
- (g) No reduction of a party's net premiums permitted if the other party to the reinsurance agreement is neither an insurance company subject to tax on its underwriting income nor a controlled foreign corporation.
- (1) In general.
- (2) Effect of a closing agreement.
- (h) Ceding commissions with respect to reinsurance of contracts other than specified insurance contracts.
- (i) Examples.

Section 1.848-3 Interim rules for certain reinsurance agreements.

- (a) Scope.
- (b) Interim rules.
- (c) Adjustments and special rules.
- (1) Assumption reinsurance.
- (2) Reimbursable dividends.
- (3) Ceding commissions.
- (i) In general.
- (ii) Amount of ceding commission.
- (4) Termination payments.
- (5) Modified coinsurance agreements.
- (d) Examples.

Section 1.848-4 Effective dates.

- (a) In general.
- (b) Special rules for reinsurance agreements.
- (1) Adjustment to ensure consistency.
- (2) Interim rules.

- (3) Net consideration rules.

Section 1.848-1 Definitions and special provisions.

- (a) *Scope.* The definitions and special provisions in this section apply solely for purposes of determining specified policy acquisition expenses under section 848 of the Internal Revenue Code, this section, and §§ 1.848-2 through 1.848-4.
- (b) *Specified insurance contract—(1) In general.* A *specified insurance contract* is any life insurance contract, annuity contract, noncancelable or guaranteed renewable accident and health insurance contract, or combination contract.
- (2) *Exceptions.* A *specified insurance contract* does not include any pension plan contract (as defined in section 818(a)), flight insurance or similar contract, or qualified foreign contract (as defined in section 807(e)(4)). A reinsurance agreement that reinsurance a qualified foreign contract is not treated as a qualified foreign contract.
- (c) *Life insurance contract.* A *life insurance contract* is any contract—
 - (1) Issued after December 31, 1984, that qualifies as a life insurance contract under section 7702(a) (including an endowment contract as defined in 7702(h)), or
 - (2) Issued prior to January 1, 1985, if the premiums on the contract are reported as life insurance premiums on the insurance company's annual statement (or would be reported as life insurance premiums if the company were required to file the annual statement for life and accident and health companies).
- (d) *Annuity contract.* An *annuity contract* is any contract (other than a life-insurance contract as defined in paragraph (c) of this section) if amounts received under the contract are subject to the rules in section 72(b) or section 72(e) (determined without regard to section 72(u)). The term *annuity contract* also includes a contract that is a qualified funding asset under section 130(d).
- (e) *Noncancelable accident and health insurance contract.* The term "noncancelable accident and health insurance contract" has the same meaning for purposes of section 848 as the term has for purposes of section 816(b).
- (f) *Guaranteed renewable accident and health insurance contract.* The term "guaranteed renewable accident and health insurance contract" has the same meaning for purposes of section 848 as the term has for purposes of section 816(e).
- (g) *Combination contract.* A *combination contract* is a contract under

which an insurance company provides, whether by rider or otherwise, two or more types of coverage (for example, life insurance, accident and health, or annuity coverage), if a contract that separately provided one of the types of coverage would be a life insurance contract, an annuity contract, or a noncancelable or guaranteed renewable accident and health insurance contract. A contract described in the preceding sentence is a combination contract notwithstanding that—

(1) The insurance company offers similar coverage to policyholders under separate contracts, or

(2) Any coverage under the contract may be discontinued independently.

The entire premium on a combination contract is treated as a premium on a specified insurance contract. Except for a contract combining group life insurance coverage with an annuity, the entire premium is subject to the highest capitalization percentage applicable to any of the coverages provided. In the case of a contract combining group life insurance coverage with an annuity, the entire premium is treated as a premium on a contract described in section 848(c)(1)(C).

(h) *Group life insurance contract—(1) In general.* A life insurance contract (as defined in paragraph (c) of this section) is a group life insurance contract if—

(i) The contract is a group life insurance contract under applicable law;

(ii) The coverage is provided under a master contract issued to the group policyholder;

(iii) The premiums on the contract are reported as group life insurance premiums on the insurance company's annual statement (or would be reported as group life insurance premiums if the company were required to file the annual statement for life and accident and health companies);

(iv) The group affiliation requirement of paragraph (h)(2) of this section is satisfied;

(v) The premiums on the contract are determined on a group basis within the meaning of paragraph (h)(3) of this section; and

(vi) The proceeds of the contract are not payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person. (See paragraph (h)(5) of this section for special rules that apply in determining if this requirement is satisfied.)

(2) *Group affiliation requirement—(i) In general.* A contract satisfies the group affiliation requirement of section 848(e)(2)(A) and this paragraph (h)(2)

only if all of the individuals eligible for coverage under the contract constitute a group described in paragraphs (h)(2)(ii) through (vii) of this section.

(ii) *Employee group.* An employee group consists of all of the employees, or any class or classes thereof within the meaning of paragraph (h)(2)(viii) of this section, of an employer. For this purpose, the term *employee* includes—

- (A) A retired or former employee;
- (B) The sole proprietor, if the employer is a sole proprietorship;
- (C) A partner of the partnership, if the employer is a partnership;
- (D) A director of the corporation, if the employer is a corporation; and
- (E) An elected or appointed official of the public body, if the employer is a public body.

(iii) *Debtor group.* A debtor group consists of all of the debtors, or any class or classes thereof within the meaning of paragraph (h)(2)(viii) of this section, of a creditor. For this purpose, the term "debtor" includes a borrower of money or purchaser or lessee of goods, services, or property for which payment is arranged through a credit transaction.

(iv) *Labor union group.* A labor union group consists of all of the members, or any class or classes thereof within the meaning of paragraph (h)(2)(viii) of this section, of a labor union or similar employee organization.

(v) *Association group.* An association group consists of all of the members, or any class or classes thereof within the meaning of paragraph (h)(2)(viii) of this section, of an association that, at the time the master contract is issued—

- (A) Is organized and maintained for purposes other than obtaining insurance;
- (B) Has been in active existence for at least two years; and

(C) Has at least 100 members.

(vi) *Credit union group.* A credit union group consists of all of the members, or any class or classes thereof within the meaning of paragraph (h)(2)(viii) of this section, of a credit union.

(vii) *Multiple group.* A multiple group consists of two or more groups from any single category described in paragraphs (h)(2)(ii) through (vi) of this section. A multiple group may not include two or more groups from different categories described in paragraphs (h)(2)(ii) through (vi) of this section.

(viii) *Class or classes of a group determined without regard to individual health characteristics.* A class or classes of a group described in paragraphs (h)(2)(ii) through (vii) of this section may be determined using any reasonable characteristics (for example, occupation or location) other than individual health characteristics.

(3) *Premiums determined on a group basis—*(i) *In general.* Premiums on a contract are determined on a group basis for purposes of section 848(e)(2)(B) and this paragraph (h) only if—

- (A) The eligibility requirement of paragraph (h)(3)(ii) of this section is satisfied, and
- (B) The identical premium requirement of paragraph (h)(3)(iii) of this section is satisfied.

(ii) *Eligibility requirement—*(A) *In general.* The eligibility requirement is satisfied if the insurance company may not deny or limit coverage to any member of the group (as defined in paragraph (h)(2) of this section).

(B) *Exception for group term life insurance without cash surrender value.* In the case of a group term life insurance contract without cash surrender value, the insurance company may deny or limit coverage to any member of the group (as defined in paragraph (h)(2) of this section) on the basis of the member's responses to questions relating to the medical history of the member and the member's family. The member must be able to answer the questions without the assistance of a physician, nurse, or any other person with medical knowledge or training.

(C) *Exception for evidence of insurability obtained before January 1, 1993.* Any denial or limitation of coverage is disregarded for purposes of this paragraph (h)(3) if the denial or limitation is based on a medical examination, responses to a medical questionnaire, or any other evidence of insurability obtained from the member or the member's doctor by the insurance company prior to January 1, 1993.

(iii) *Identical premium requirement—*(A) *In general.* The identical premium requirement is satisfied if all members covered by the contract are charged the same premium or are charged premiums that differ only because of the gender, smoking habits, or actual age of the member. Determinations of age must be made uniformly by reference to the member's last birthday, next birthday, or nearest birthday.

(B) *Flexible premium contracts.* In the case of a contract which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount, the identical premium requirement is satisfied if the periodic mortality and expense charges imposed by the insurance company in determining the policy account value for each member insured by the contract differ only to reflect the gender, smoking habits, or actual age of the member.

(iv) *Disqualification of group.* If paragraphs (h)(3)(i) (A) and (B) of this section are not satisfied, the premiums

for the entire group are not treated as group life insurance premiums.

(4) *Supplemental life insurance coverage.* If a group life insurance contract provides supplemental life insurance coverage (for members of the group, their spouses, or their dependent children), the primary coverage and the supplemental coverage are treated as provided under two separate contracts. Each of these two contracts is considered separately in determining whether the eligibility requirement of paragraph (h)(3)(ii) of this section and the identical premium requirement of paragraph (h)(3)(iii) of this section are satisfied. In determining whether the group affiliation requirement of paragraph (h)(2) of this section is satisfied for the supplemental coverage, a member's spouse and dependent children are treated as members of the group if they are eligible for coverage.

(5) *Special rules relating to the payment of proceeds.* The following rules apply in determining whether, for purposes of paragraph (h)(1)(vi) of this section, the proceeds of a contract are payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person.

(i) *Contracts issued to a welfare benefit fund.* If a contract issued to a welfare benefit fund (as defined in section 419) provides for payment of proceeds to the welfare benefit fund, the proceeds of the contract are not considered payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person, provided the proceeds are paid as death benefits to the employee whose life was insured or the employee's beneficiary.

(ii) *Credit life insurance contracts.* If a credit life insurance contract provides for payment of proceeds to the insured's creditor, the proceeds of the contract are not treated as payable to or for the benefit of the insured's employer, an organization or association to which the insured belongs, or other similar person, provided the proceeds are applied against outstanding indebtedness of the insured.

(i) *General deductions.* The term "general deductions" is defined in section 848(e)(2). The amount of a company's general deductions is determined without regard to the rules of § 1.848-2(e) which apply only for purposes of determining net consideration for reinsurance agreements.

§ 1.848-2 Determination of net premiums.

(a) *Net premiums.* An insurance company must use the accrual method of accounting (as prescribed by section 811 (a)(1)) to determine the net premiums with respect to each category of specified insurance contracts. With respect to any category of contracts, net premiums means—

(1) The gross amount of premiums and other consideration (see paragraph (b) of this section), reduced by—

(2) The sum of—

(i) The return premiums (see paragraph (d) of this section), and

(ii) The net negative consideration for any reinsurance agreements (see paragraphs (e), (f), and (g) of this section).

(b) *Gross amount of premiums and other consideration—(1) General rule.* The term *gross amount of premiums and other consideration* means the sum of—

(i) All premiums and other consideration (other than amounts on reinsurance agreements), and

(ii) The net positive consideration for any reinsurance agreements (see paragraph (e) of this section).

(2) *Items included.* The gross amount of premiums and other consideration includes—

(i) Advance premiums;

(ii) Amounts in a premium deposit fund or similar account, to the extent provided in paragraph (b)(3) of this section;

(iii) Fees;

(iv) Assessments;

(v) Amounts that the insurance company charges itself representing premiums with respect to benefits for its employees (including full-time life insurance salesmen treated as employees under section 7701(a)(20)); and

(vi) Amounts accrued on a life insurance contract with respect to any qualified additional benefit (as defined in section 7702(f)(5)).

(3) *Treatment of premium deposits—*

(i) *In general.* An amount in a premium deposit fund or similar account is taken into account in determining the gross amount of premiums and other consideration at the earlier of the time that the amount is applied to, or irrevocably committed to, the payment of a premium on a specified insurance contract. If an amount is irrevocably committed to the payment of a premium on a specified insurance contract, then neither that amount nor any earnings allocable to that amount are included in the gross amount of premiums and other consideration when applied to the payment of a premium on the same contract.

(ii) *Amounts irrevocably committed to the payment of premiums.* Except as provided in paragraph (b)(3)(iii) of this section, an amount in a premium deposit fund or similar account is irrevocably committed to the payment of premiums on a contract only if neither the amount nor any earnings allocable to that amount may be—

(A) Returned to the policyholder or any other person (other than on surrender of the contract), or

(B) Used by the policyholder to fund another contract.

(iii) *Retired lives reserves.* Premiums received by an insurance company under a retired lives reserve arrangement are treated as irrevocably committed to the payment of premiums on a specified insurance contract.

(4) *Exchanges of contracts—(i) In general.* If any contract is exchanged (within the meaning of section 1001) for a specified insurance contract, the insurance company that issues the specified insurance contract must include the fair market value of the contract issued in the gross amount of premiums and other consideration.

(ii) *Waiver for companies in rehabilitation proceedings.* The Commissioner may waive the application of paragraph (b)(4)(i) of this section, subject to any terms and conditions that the Commissioner deems appropriate, if an exchange results from a change in the terms of a contract approved by a court supervising the rehabilitation or liquidation of an insolvent insurance company.

(5) *Deferred and uncollected premiums.* The gross amount of premiums and other consideration does not include deferred and uncollected premiums.

(c) *Amounts excluded from the gross amount of premiums and other consideration—(1) In general.* The following items are excluded from the gross amount of premiums and other consideration—

(i) Items treated by section 808(e) as policyholder dividends which are paid to the policyholder and immediately returned to the insurance company as a premium on the same contract that generated the dividend, including—

(A) A policyholder dividend applied to pay a premium on the contract that generated the dividend;

(B) Excess interest accumulated within the contract;

(C) A policyholder dividend applied to purchase a paid-up addition on the contract that generated the dividend;

(D) A policyholder dividend applied to reduce premiums otherwise payable on the contract that generated the dividend;

(E) An experience-rated refund applied to pay a premium on the group contract that generated the refund; and

(F) An experience-rated refund applied to a premium stabilization reserve held with respect to the group contract that generated the refund;

(ii) Premiums waived as a result of a policyholder becoming disabled;

(iii) Premiums considered to be paid on a contract as the result of the surrender of a paid-up addition previously issued with respect to the same contract; and

(iv) Amounts considered to be premiums upon an election by a policyholder or by a beneficiary of the contract to receive death benefits other than in a lump sum.

(2) *Dividend accumulations.* Amounts applied from a dividend accumulation account to pay premiums on a specified insurance contract are not amounts treated as paid to, and immediately returned by the policyholder, for purposes of paragraph (c)(1) of this section.

(d) *Return premiums.* For purposes of section 848 (d)(1)(B) of the Internal Revenue Code and this section, the term *return premiums* means amounts (other than policyholder dividends or claims and benefit payments) returned or credited to the policyholder. Return premiums do not include amounts returned to another insurance company under a reinsurance agreement. For the treatment of these amounts, see paragraph (e) of this section.

(e) *Net consideration for a reinsurance agreement—(1) In general.* For purposes of section 848, the ceding company and the reinsurer must treat amounts arising from the reinsurance of a specified insurance contract consistently in determining their net premiums. See paragraphs (f) and (g) of this section for restrictions on the amount of the net negative consideration for reinsurance that may be taken into account.

(2) *Net consideration determined by a ceding company.* The net consideration determined by a ceding company for a reinsurance agreement equals—

(i) The gross amount incurred by the reinsurer with respect to the reinsurance agreement, including any ceding commissions, annual allowances, reimbursements of claims and benefits, reimbursements for policy loans on the underlying reinsured contracts, modified coinsurance reserve adjustments under paragraph (e)(5) of this section, experience-rated adjustments, and termination payments, less

(ii) The gross amount of premiums and other consideration incurred by the

ceding company with respect to the reinsurance agreement.

If the net consideration is less than zero, the ceding company has net negative consideration for the reinsurance agreement. If the net consideration is greater than zero, the ceding company has net positive consideration for the reinsurance agreement.

(3) *Net consideration determined by the reinsurer.* The net consideration determined by a reinsurer for a reinsurance agreement equals—

(i) The amount described in paragraph (e)(2)(ii) of this section, less

(ii) The amount described in paragraph (e)(2)(i) of this section.

If the net consideration is less than zero, the reinsurer has net negative consideration for the reinsurance agreement. If the net consideration is greater than zero, the reinsurer has net positive consideration for the reinsurance agreement.

(4) *Timing consistency required.* For purposes of determining the net consideration of a party for a reinsurance agreement, an income or expense item is taken into account for the first taxable year for which the item is required to be taken into account by either party. Thus, the ceding company and the reinsurer must take the item into account for the same taxable year (or for the same period if the parties have different taxable years).

(5) *Modified coinsurance and funds-withheld reinsurance agreements—(i) In general.* In the case of a modified coinsurance or funds-withheld reinsurance agreement, the amount of any reserve transferred (or loan made by the reinsurer to the ceding company) on either the inception date or the termination date of the agreement is not taken into account in determining the net consideration for the taxable year. However, the amount of any intervening reserve adjustment (or similar adjustment to a loan made by the reinsurer to the ceding company) is taken into account in determining net consideration. The amount of any investment income credited to the reinsurer reduces the amount incurred by the reinsurer.

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

Example 1. (i) On January 1, 1993, an insurance company (L1) enters into a modified coinsurance agreement with another insurance company (L2), covering a block of individual life insurance contracts. Under the agreement, L2 is credited with all of the premiums received on the reinsured contracts, but must indemnify L1 for all claims and expenses incurred with respect to the contracts. The agreement further provides

that each year a reserve adjustment between L1 and L2 is made. This reserve adjustment is equal to the change in the statutory reserves for the reinsured contracts during the calendar year, adjusted by an interest payment to L2. For calendar year 1993, the premiums and the modified coinsurance reserve adjustment are as follows:

Premiums—\$100,000

Statutory reserves on December 31, 1992—

\$356,000

Statutory reserves on December 31, 1993—

\$431,000

Interest credited to L2 for the year—\$28,480

Modified coinsurance reserve adjustment:

(i) Reserve (end of year)—\$431,000

(ii) Reserve (beginning of year)—\$356,000

(iii) Interest—\$28,480

(iv) Reserve adjustment [(i) – (ii) – (iii)] = \$46,520

Net amount payable to L2—\$53,480 (\$100,000 premiums—\$46,520 reserve adjustment)

(ii) Under paragraph (e)(5)(i) of this section, the reserve on the reinsured contracts on the inception date of the reinsurance agreement (\$356,000) is not taken into account in determining the net consideration for the reinsurance agreement. However, the amount of the intervening reserve adjustment is taken into account. Under paragraph (e)(2) of this section, L1's net negative consideration is (\$53,480) (\$100,000 premiums—\$46,520). The net positive consideration for L2 is \$53,480. Pursuant to paragraph (a)(1) of this section, L2 includes \$53,480 in its gross amount of premiums and other consideration for the taxable year.

Example 2. (i) On January 1, 1993, an insurance company (L1) enters into a coinsurance agreement with another insurance company (L2), covering a block of individual life insurance contracts. Under the agreement, L2 is credited with all of the premiums received on the reinsured contracts, but must indemnify L1 for all claims and expenses incurred with respect to the contracts. As part of the same transaction, L2 agrees to make a loan to L1 equal to the amount of the statutory reserves on the reinsured contracts. The statutory reserves on the reinsured contracts on the effective date of the reinsurance agreement are \$356,000. Thus, on the inception date of the reinsurance agreement, L1 transfers to L2 its note for \$356,000 as consideration for reinsurance.

(ii) For the year ended December 31, 1993, the premiums received under the reinsurance agreement are \$100,000. The statutory reserves on the reinsured contracts are \$431,000 on December 31, 1993, and the loan by L2 to L1 is also increased to \$431,000. The interest credited to L2 for the year is \$28,480.

(iii) The reinsurance agreement between L1 and L2 is a funds-withheld reinsurance agreement. Thus, the statutory reserves associated with the reinsured contracts on the inception date of the reinsurance agreement are not considered for purposes of determining the net consideration for the agreement. The increase in the loan from L2 to L1, and the interest credited to L2, are taken into account in determining the parties' net consideration. Under paragraph (e)(2) of this section, L1's net negative consideration is

(\$53,480) (\$100,000 premiums—\$75,000 increase in loan from L2 + \$28,480 interest credited to L2). The net positive consideration for L2 is \$53,480. Under paragraph (a)(1) of this section, L2 includes \$53,480 in its gross amount of premiums and other consideration.

(6) *Treatment of retrocessions.* For purposes of paragraphs (e) and (f) of this section, a retrocession is considered a separate reinsurance agreement. The party that is relieved of liability under the reinsurance agreement is treated as the ceding company. The recapture or termination of a reinsurance agreement is not treated as a separate reinsurance agreement.

(7) *Mixed reinsurance agreements.* If a reinsurance agreement includes more than one category of specified insurance contracts (or specified insurance contracts and contracts that are not specified insurance contracts), the ceding company and the reinsurer must determine the net consideration and the application of paragraph (f) separately for each category of specified insurance contracts.

(8) *Waiver for companies in rehabilitation proceedings.* The Commissioner may waive the application of the rules in paragraph (e) of this section to a reinsurance agreement approved by a court supervising the rehabilitation or liquidation of an insolvent insurance company. The waiver is subject to any terms and conditions that the Commissioner deems appropriate.

(f) *Reduction to ensure consistency of capitalization for reinsurance agreements—(1) In general.* Paragraph (f)(2) of this section provides for a reduction in the amount of net negative consideration that a party to a reinsurance agreement may take into account in determining net premiums under paragraph (a)(2)(ii) of this section if the party with net positive consideration has a capitalization shortfall (as defined in paragraph (f)(3) of this section). Unless the party with net negative consideration demonstrates that the other party does not have a capitalization shortfall or demonstrates the amount of the other party's capitalization shortfall allocable to the reinsurance agreement, the net negative consideration that may be taken into account under paragraph (a)(2)(ii) of this section is zero. However, the reduction of paragraph (f)(2) of this section does not apply to a reinsurance agreement if the parties make a joint election under paragraph (f)(7) of this section. Under the election, the party with net positive consideration will capitalize specified policy acquisition expenses with respect

to the agreement without regard to the general deductions limitation.

(2) *Amount of reduction.* The reduction required by this paragraph (f)(2) equals the amount obtained by dividing—

(i) The portion of the capitalization shortfall (as defined in paragraph (f)(3) of this section) allocated to the reinsurance agreement under paragraph (f)(6) of this section, by

(ii) The applicable percentage set forth in section 848(c)(1) for the category of specified insurance contracts reinsured by the agreement.

(3) *Capitalization shortfall.* A "capitalization shortfall" equals the excess of—

(i) The sum of the required capitalization amounts (as defined in paragraph (f)(4) of this section) for all reinsurance agreements, over

(ii) The general deductions allocated to reinsurance agreements, as determined under paragraph (f)(5) of this section.

(4) *Required capitalization amount—*

(i) *In general.* The "required capitalization amount" for a reinsurance agreement equals the amount (either positive or negative) obtained by multiplying—

(A) The net positive or negative consideration for the agreement, by

(B) The applicable percentage set forth in section 848(c)(1) for that category of specified insurance contracts.

(ii) *Presumptions with respect to net negative consideration.* Solely for purposes of computing a party's required capitalization amount under this paragraph (f)(4)—

(A) If either party to the reinsurance agreement is the direct issuer of the reinsured contracts, the party computing its required capitalization amount takes into account the full amount of any net negative consideration without regard to any potential reduction under paragraph (f)(2) of this section.

(B) If neither party to the reinsurance agreement is the direct issuer of the reinsured contracts, any net negative consideration is presumed to equal zero in computing a party's required capitalization amount except to the extent that the party with the net negative consideration establishes that the other party to that reinsurance agreement capitalizes the appropriate amount.

(5) *General deductions allocable to reinsurance agreements.* An insurance company's general deductions allocable to its reinsurance agreements equals the excess, if any, of—

(i) The company's general deductions (excluding additional amounts treated

as general deductions under paragraph (f)(7) of this section), over

(ii) The amount determined under section 848(c)(1) on specified insurance contracts that the insurance company has issued directly. This amount is determined without regard to reinsurance agreements.

(6) *Allocation of capitalization shortfall among reinsurance agreements.* The capitalization shortfall is allocated to each reinsurance agreement for which the required capitalization amount (as determined in paragraph (f)(4) of this section) is a positive amount. The portion of the capitalization shortfall allocable to each agreement equals the amount which bears the same ratio to the capitalization shortfall as the required capitalization amount for the reinsurance agreement bears to the sum of the positive required capitalization amounts for all reinsurance agreements.

(7) *Election to determine specified policy acquisition expenses for an agreement without regard to general deductions limitation—*(i) *In general.* The reduction specified by paragraph (f)(2) of this section does not apply if the parties to a reinsurance agreement make an election under this paragraph (f)(7). The election requires the party with net positive consideration to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. To do this, that party must reduce its deductions under section 805 or section 832(c) by the amount, if any, of the party's capitalization shortfall allocable to the reinsurance agreement.

(ii) *Manner of making election.* To make an election under paragraph (f)(7) of this section, the ceding company and the reinsurer must include an election statement in the reinsurance agreement, either as part of the original terms of the agreement or by an addendum to the agreement. The parties must attach a schedule to their federal income tax returns for the first taxable year ending after the election becomes effective which identifies the reinsurance agreement for which the joint election under this paragraph (f)(7) has been made.

(iii) *Election statement.* The election statement in the reinsurance agreement must—

(A) Provide that the party with net positive consideration for the reinsurance agreement for each taxable year will capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation,

(B) Set forth the agreement of the parties to exchange information pertaining to the amount of net consideration under the reinsurance agreement each year to ensure consistency,

(C) Specify the calendar year for which the election becomes effective, and

(D) Be signed by both parties.

(iv) *Effect of election.* An election under this paragraph (f)(7) is effective for the first taxable year ending after the effective date specified in the election statement, and for all subsequent taxable years for which the reinsurance agreement remains in effect. The election may not be revoked without the consent of the Commissioner.

(g) *No reduction of a party's net premiums permitted if the other party to the reinsurance agreement is neither an insurance company subject to tax on its underwriting income nor a controlled foreign corporation—*(1) *In general.* A party to a reinsurance agreement may reduce its net premiums by the net negative consideration under a reinsurance agreement for the taxable year only if the other party is—

(i) An insurance company subject to tax on underwriting income under subchapter L of the Code, or

(ii) A controlled foreign corporation.

(2) *Effect of a closing agreement.* For purposes of section 848(d)(4)(A) and paragraph (g)(1) of this section, if a reinsurer agrees in a closing agreement with the Internal Revenue Service to be subject to tax on its income from sources within the United States under rules equivalent to the provisions of subchapter L, the reinsurer is treated as described in paragraph (g)(1)(i) of this section.

(h) *Ceding commissions with respect to reinsurance of contracts other than specified insurance contracts.* A ceding commission incurred with respect to the reinsurance of an insurance contract that is not a specified insurance contract is not subject to the provisions of section 848(g).

(i) *Examples.* The principles of this section are illustrated by the following examples.

Example 1. On July 1, 1992, a life insurance company (L1) transfers a block of individual whole life insurance contracts to an unrelated life insurance company (L2) under an agreement whereby L2 becomes solely liable to the policyholders under the contracts reinsured. L1 and L2 are calendar year taxpayers. Under the assumption reinsurance agreement, L1 agrees to pay L2 \$100,000 for assuming the life insurance contracts, and L2 agrees to pay L1 a \$17,000 ceding commission. Under paragraph (e)(2) of this section, L1 has net negative consideration of

(\$83,000) (\$17,000 ceding commission incurred by L2 — \$100,000 premium incurred by L1 for reinsurance). Under paragraph (e)(3) of this section, L2 has net positive consideration of \$83,000. Under paragraph (b)(1) of this section, L2 includes the net positive consideration in its gross amount of premiums and other consideration.

Example 2. (i) On July 1, 1992, a life insurance company (L1) transfers a block of individual whole life insurance contracts to an unrelated life insurance company (L2) under an agreement whereby L1 remains liable to the policyholders under the reinsured contracts. L1 and L2 are calendar year taxpayers. Under the indemnity reinsurance agreement, L1 agrees to pay L2 \$100,000 for reinsuring the life insurance contracts, and L2 agrees to pay L1 a \$17,000 ceding commission. L1 agrees to pay L2 an amount equal to the future premiums on the reinsured contracts. L2 agrees to indemnify L1 for claims and benefits and administrative expenses incurred by L1 while the reinsurance agreement is in effect.

(ii) For the period beginning July 1, 1992, and ending December 31, 1992, the following income and expense items are determined with respect to the reinsured contracts:

Item	Income	Expense
Premiums.....	\$25,000	
Death benefits.....		\$10,000
Surrender benefits.....		8,000
Premium taxes and other expenses.....		2,000
		\$20,000

(iii) Under paragraph (e)(2) of this section, L1's net negative consideration equals (\$88,000), which is determined by subtracting the \$125,000 (\$100,000 + \$25,000) reinsurance premiums from the \$37,000 incurred by L2 under the reinsurance agreement (\$17,000 + \$10,000 + \$8,000 + \$2,000). Under paragraph (e)(3) of this section, L2's net positive consideration is \$88,000. Under paragraph (b)(1) of this section, L2 includes the \$88,000 net positive consideration in its gross amount of premiums and other consideration.

Example 3. (i) Assume that the reinsurance agreement referred to in *Example 2* is terminated on December 31, 1993. During the period from January 1, 1993 through December 31, 1993, the following income and expense items are determined with respect to the reinsured contracts:

Item	Income Expense	Expense
Premiums.....	\$45,000	
Death benefits.....		\$18,000
Surrender benefits.....		6,000
Premium taxes and other expenses.....		8,000
		\$32,000

On the termination date of the reinsurance agreement, L1 receives a payment of \$70,000 from L2 as consideration for releasing L2 from liability with respect to the reinsured contracts.

(ii) Under paragraph (e)(2) of this section, L1's net positive consideration equals \$57,000, which is the excess of the \$102,000 incurred by L2 for the year (\$18,000 + \$6,000 + \$8,000 + \$70,000) over the \$45,000 reinsurance premiums incurred by L1. Under paragraph (e)(3) of this section, L2's net negative consideration is (\$57,000). Under paragraph (b)(1) of this section, L1 includes the net positive consideration in its gross amount of premiums and other consideration.

Example 4. (i) On December 31, 1992, a life insurance company (L1) transfers a block of individual whole life insurance contracts to an unrelated life insurance company (L2) under an agreement in which L2 becomes solely liable to the policyholders on the reinsured contracts. L1 transfers \$105,000 to L2 as consideration for the reinsurance of the contracts.

(ii) L1 and L2 do not make an election under paragraph (f)(7) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. L2 has no other insurance business, and its general deductions for the taxable year are \$3,500.

(iii) Under paragraph (e)(2) of this section, L1's net negative consideration is (\$105,000). Under paragraph (e)(3) of this section, L2's net positive consideration is \$105,000. Pursuant to paragraph (b)(1) of this section, L2 includes the net positive consideration in its gross amount of premiums and other consideration.

(iv) The required capitalization amount under paragraph (f)(4) of this section for the reinsurance agreement is \$8,085 (\$105,000 × .077). L2's general deductions, all of which are allocable to the reinsurance agreement with L1, are \$3,500. The \$4,585 difference between the required capitalization amount (\$8,085) and the general deductions allocable to the reinsurance agreement (\$3,500) represents L2's capitalization shortfall under paragraph (f)(3) of this section.

(v) Since L2 has a capitalization shortfall allocable to the agreement, the rules of paragraph (f) of this section apply for purposes of determining the amount by which L1 may reduce its net premiums. Under paragraph (f)(2) of this section, L1 must reduce the amount of net negative consideration that it takes into account under paragraph (a) of this section by \$59,545 (\$4,585 / .077). Thus, of the \$105,000 net negative consideration under the reinsurance agreement, L1 may take into account only \$45,455 as a reduction of its net premiums.

Example 5. The facts are the same as *Example 4*, except that L1 and L2 make the election under paragraph (f)(7) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general

deductions limitation. Pursuant to this election, L2 must capitalize as specified policy acquisition expenses an amount equal to \$8,085 (\$105,000 × .077). L1 may reduce its net premiums by the \$105,000 of net negative consideration.

Example 6. (i) A life insurance company (L1) is both a direct issuer and a reinsurer of life insurance and annuity contracts. For 1993, L1's net premiums under section 848(d)(1) for directly issued individual life insurance and annuity contracts are as follows:

Category	Net premiums
Life insurance contracts	\$17,000,000
Annuity contracts	8,000,000

L1's general deductions for 1993 are \$1,500,000.

(ii) For 1993, L1 is a reinsurer under four separate indemnity reinsurance agreements with unrelated insurance companies (L2, L3, L4, and L5). The agreements with L2, L3, and L4 cover whole life insurance contracts issued by those companies. The agreement with L5 covers annuity contracts issued by L5. The parties to the reinsurance agreements have not made the election under paragraph (f)(7) of this section to capitalize specified policy acquisition expenses with respect to these agreements without regard to the general deductions limitation.

(iii) L1's net consideration for 1993 with respect to its reinsurance agreements is as follows:

Agreement	Net consideration
L2	\$1,200,000
L3	(350,000)
L4	300,000
L5	600,000

(iv) To determine whether a reduction under paragraph (f)(2) of this section applies with respect to these reinsurance agreements, L1 must determine the required capitalization amounts for its reinsurance agreements and the amount of its general deductions allocable to these agreements.

(v) Pursuant to paragraph (f)(4) of this section, the required capitalization amount for each reinsurance agreement is determined as follows:

L2	$\$1,200,000 \times .077 = \$92,400$
L3	$(\$350,000) \times .077 = (\$26,950)$
L4	$\$300,000 \times .077 = \$23,100$
L5	$\$600,000 \times .0175 = \$10,500$

Thus, the sum of L1's required capitalization amounts on its reinsurance agreements equals \$99,050.

(vi) Pursuant to paragraph (f)(5) of this section, L1 determines its general deductions allocable to its reinsurance agreements. The amount determined under section 848(c)(1) on its directly issued contracts is:

Category	Required capitalization amount
Annuity contracts	\$8,000,000 \times .0175 = \$140,000
Life insurance contracts	\$17,000,000 \times .077 = 1,309,000
	1,449,000

L1's general deductions allocable to its reinsurance agreements are \$51,000 (\$1,500,000 - \$1,449,000).

(vii) Pursuant to paragraph (f)(3) of this section, L1's capitalization shortfall equals \$48,050, reflecting the excess of L1's required capitalization amounts for its reinsurance agreements (\$99,050) over the general deductions allocable to its reinsurance agreements (\$51,000).

(viii) Pursuant to paragraph (f)(6) of this section, the capitalization shortfall of \$48,050 must be allocated between each of L1's reinsurance agreements with net positive consideration in proportion to their respective required capitalization amounts. The allocation of the shortfall between L1's reinsurance agreements is determined as follows:

$$L2 = \$35,237 (\$48,050 \times 92,400/126,000)$$

$$L4 = \$8,809 (\$48,050 \times 23,100/126,000)$$

$$L5 = \$4,004 (\$48,050 \times 10,500/126,000)$$

(ix) Accordingly, the reduction under paragraph (f)(2) of this section that applies to the amount of net negative consideration that may be recognized by L2, L4, and L5 is determined as follows:

$$L2 = \$457,623 (\$35,237 / .077)$$

$$L4 = \$114,403 (\$8,809 / .077)$$

$$L5 = \$228,800 (\$4,004 / .0175)$$

Example 7. The facts are the same as Example 6, except that L1 and L4 make a joint election under paragraph (f)(7) of this section to capitalize specified policy acquisition expenses with respect to the reinsurance agreement without regard to the general deductions limitation. Pursuant to this election, L1 must reduce its deductions under section 805 by an amount equal to the capitalization shortfall allocable to the reinsurance agreement with L4 (\$8,809). L4 may reduce its net premiums by the \$300,000 net negative consideration. The election by L1 and L4 does not change the amount of the capitalization shortfall allocable under paragraph (f)(6) of this section to the reinsurance agreements with L2 and L5. Thus, the reduction required by paragraph (f)(2) of this section with respect to the amount of the net negative consideration that L2 and L5 may recognize under paragraph (a)(2)(ii) of this section is \$457,623 and \$228,800, respectively.

§ 1.848-3 Interim rules for certain reinsurance agreements.

(a) *Scope.* The rules of this section apply in determining net premiums for a reinsurance agreement with respect to amounts arising before the first day of the first taxable year beginning after December 31, 1991.

(b) *Interim rules.* In determining a company's gross amount of premiums and other consideration under section

848(d)(1)(A) and premiums and other consideration incurred for reinsurance under section 848(d)(1)(B), the general rules of subchapter L of the Code apply with the adjustments and special rules set forth in paragraph (c) of this section. Except as provided in paragraph (c)(5) of this section (which applies to modified coinsurance transactions), the gross amount of premiums and other consideration is determined without any reduction for ceding commissions, annual allowances, reimbursements of claims and benefits, or other amounts incurred by a reinsurer with respect to reinsured contracts.

(c) *Adjustments and special rules.*

This paragraph sets forth certain adjustments and special rules that apply for reinsurance agreements in determining the gross amount of premiums and other consideration under section 848(d)(1)(A) and premiums and other consideration incurred for reinsurance under section 848(d)(1)(B).

(1) *Assumption reinsurance.* The ceding company must treat the gross amount of consideration incurred with respect to an assumption reinsurance agreement as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The reinsurer must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). For rules relating to the determination and treatment of ceding commissions, see paragraph (c)(3) of this section.

(2) *Reimbursable dividends.* The reinsurer must treat the amount of policyholder dividends reimbursable to the ceding company (other than under a modified coinsurance agreement covered by paragraph (c)(5) of this section) as a return premium under section 848(d)(1)(b). The ceding company must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). The amount of any experience-related refund due the ceding company is treated as a policyholder dividend reimbursable to the ceding company.

(3) *Ceding commissions—(i) In general.* The reinsurer must treat ceding commissions as a general deduction. The ceding company must treat ceding commissions as non-premium related income under section 803(a)(3). The ceding company may not reduce its

general deductions by the amount of the ceding commission.

(ii) *Amount of ceding commission.* For purposes of this section, the amount of a ceding commission equals the excess, if any, of—

(A) The increase in the reinsurer's tax reserves resulting from the reinsurance agreement (computed in accordance with section 807(d)), over

(B) The gross consideration incurred by the ceding company for the reinsurance agreement, less any amount incurred by the reinsurer as part of the reinsurance agreement.

(4) *Termination payments.* The reinsurer must treat the gross amount of premiums and other consideration payable as a termination payment to the ceding company (including the tax reserves on the reinsured contracts) as premiums and other consideration incurred for reinsurance under section 848(b)(1)(B). The ceding company must include the same amount in the gross amount of premiums and other consideration under section 848(d)(1)(A). This paragraph does not apply to modified coinsurance agreements.

(5) *Modified coinsurance agreements.* In the case of a modified coinsurance agreement, the parties must calculate their net premiums on a net basis by taking into account all of the obligations of the parties under the agreement including ceding commissions, annual allowances, reimbursements of claims and benefits, reimbursable policyholder dividends, modified coinsurance reserve adjustments, and termination payments.

(d) *Examples.* The principles of this section are illustrated by the following examples.

Example 1. On July 1, 1991, an insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. The tax reserves on the reinsured contracts are \$100,000. Under the assumption reinsurance agreement, L1 pays L2 \$83,000 for assuming the life insurance contracts. Under paragraph (c)(3) of this section, since the increase in L2's tax reserves (\$100,000) exceeds the net consideration transferred by L1 (\$83,000), the reinsurance agreement provides for a ceding commission. The ceding commission equals \$17,000 (\$100,000 - \$83,000). Under paragraph (b)(2) of this section, L1 reduces its gross amount of premiums and

other consideration for the 1991 taxable year under section 848(d)(1)(b) by the \$100,000 premium incurred for reinsurance, and L2 includes the \$100,000 premium for reinsurance in its gross amount of premiums and other consideration under section 848(d)(1)(A). L1 treats the \$17,000 ceding commission as non-premium related income under section 803(a)(3).

Example 2. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. The tax reserves on the reinsured contracts are \$100,000. Under the assumption reinsurance agreement, L1 pays L2 \$100,000 for assuming the contracts, and L2 pays L1 a \$17,000 ceding commission. Under paragraph (b)(2) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by \$100,000. L2 includes \$100,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A). Under paragraph (c)(3) of this section, since the increase in L2's tax reserves (\$100,000) exceeds the net consideration transferred by L1, the reinsurance agreement provides for a ceding commission. The ceding commission equals \$17,000 (\$100,000 increase in L2's tax reserves less \$83,000 net consideration transferred by L1). L1 treats the \$17,000 ceding commission as non-premium related income under section 803(a)(3).

Example 3. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. Under the assumption reinsurance agreement, L1 transfers assets of \$105,000 to L2. The tax reserves on the reinsured contracts are \$100,000. Under paragraph (b)(2) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by \$105,000, and L2 increases its gross amount of premiums and other consideration under section 848(d)(1)(A) by \$105,000. Since the net consideration transferred by L1 exceeds the increase in L2's tax reserves, there is no ceding commission under paragraph (c)(3) of this section.

Example 4. (i) On June 30, 1991, a life insurance company (L1) reinsurance 40% of certain individual life insurance contracts to be issued after that date with an unrelated insurance company (L2) under an agreement whereby L1 remains directly liable to the policyholders with respect to the contracts reinsured. The agreement provides that L2 is credited with 40% of any premiums received with respect to the reinsured contracts, but must indemnify L1 for 40% of any claims, expenses, and policyholder dividends. During the period from July 1 through December 31, 1991, L1 has the following income and expense items with respect to the reinsured policies:

Item	Income	Expense
Premiums.....	\$8,000	
Benefits paid.....		\$1,000
Commissions.....		6,000
Policyholder dividends.....		500
		\$7,500

(ii) Under paragraphs (b)(2) and (c)(2) of this section, L1 includes \$8,200 in its gross amount of premiums and other consideration under section 848(d)(1)(A) (\$8,000 gross premiums on the reinsured contracts plus \$200 of policyholder dividends reimbursed by L2 (\$500 \times 40%)). L1 reduces its gross amount of premiums and other consideration by \$3,200 (40% \times \$8,000) as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The benefits and commissions incurred by L1 with respect to the reinsured contracts do not reduce L1's gross amount of premiums and other consideration under section 848(d)(1)(B). L2 includes \$3,200 in its gross amount of premiums and other consideration (40% \times \$8,000) and as having paid return premiums of \$200 (the amount of reimbursable dividends paid to L1). L2 is also treated as having incurred the following expenses with respect to these reinsured contracts: \$400 as benefits paid (40% \times \$1,000) and \$2,400 as commissions expense (40% \times \$6,000). Under paragraph (b)(2) of this section, these expenses do not reduce L2's gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 5. On December 31, 1991, an insurance company (L1) terminates a reinsurance agreement with an unrelated insurance company (L2). The termination applies to a reinsurance agreement under which L1 had ceded 40% of its liability on a block of individual life insurance contracts to L2. Upon termination of the reinsurance agreement, L2 makes a final payment of \$116,000 to L1 for assuming full liability under the contracts. The tax reserves attributable to L2's portion of the reinsured contracts are \$120,000. Under paragraph (c)(4) of this section, L2 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by \$120,000. L1 includes \$120,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 6. (i) On June 30, 1991, an insurance company (L1) reinsurance 40% of its existing life insurance contracts with an unrelated life insurance company (L2) under a modified coinsurance agreement. For the period July 1, 1991 through December 31, 1991, L1 reports the following income and expense items with respect to L2's 40% share of the reinsured contracts:

Item	Income	Expense
Premiums.....	\$10,000	
Benefits paid.....		\$4,000
Policyholder dividends.....		500
Reserve adjustment.....		1,500
Total.....		\$6,000

(ii) Pursuant to paragraph (c)(5) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by the \$4,000 net consideration for the modified coinsurance agreement (\$10,000 $-$ \$6,000). L2 includes the \$4,000 net consideration in its gross amount of premiums and other consideration under section 848(d)(1)(A).

§ 1.848-4 Effective dates.

(a) *In general.* Except as otherwise provided in this section, §§ 1.848-1, 1.848-2, and 1.848-3 are effective for taxable years of an insurance company beginning after November 15, 1991.

(b) *Special rules for reinsurance agreements—(1) Adjustment to ensure consistency.* Section 1.848-2(f) (which provides for an adjustment to ensure consistency) is effective for—

(i) All amounts arising under any reinsurance agreement executed on or after November 15, 1991, and

(ii) All amounts arising under any reinsurance agreement for taxable years beginning after December 31, 1991, without regard to when the reinsurance agreement was entered into.

(2) *Interim rules.* Section 1.848-3 is effective with respect to amounts arising before the first day of the first taxable year beginning after December 31, 1991, under a reinsurance agreement.

(3) *Net consideration rules.* Section 1.848-2(e) (which provides rules for determining the net consideration for a reinsurance agreement) is effective with respect to amounts arising for taxable years beginning after December 31, 1991, under a reinsurance agreement.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2617

Determination of Plan Sufficiency and Termination of Sufficient Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise new subpart E to part 2617 to impose certain notice requirements on plan administrators of plans undergoing standard terminations pursuant to title IV of the Employee Retirement Income Security Act of 1974, as amended. Plan administrators would be required to inform both plan participants and the Pension Benefit Guaranty Corporation

("PBGC") of the identity of the insurer or insurers from whom irrevocable commitments may be purchased prior to the distribution of plan assets on a standard termination. This proposed rule is needed because the recent financial difficulties of certain insurers have heightened public concern over the potential risks faced by participants in terminating pension plans whose benefits are to be provided through irrevocable commitments.

DATES: Comments must be submitted by December 16, 1991.

ADDRESSES: Comments should be addressed to Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Angela J. Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The recent and highly publicized financial difficulties of certain insurers (most notably the Executive Life Insurance Company, which was placed in conservatorship in April 1991) have focused public concern on the potential risks faced by participants in terminating pension plans whose benefits are to be provided through irrevocable commitments issued by such insurers. In view of these concerns, on June 21, 1991, the PBGC issued an Advance Notice of Proposed Rulemaking ("ANPRM") soliciting public comment on whether additional regulation concerning plan administrators' selections of annuity providers for terminating plans is needed and, if so, what such regulation should include. 56 FR 28642, 28643. (The Department of Labor issued a separate ANPRM in the same issue of the *Federal Register* (56 FR 28638), soliciting public comment on similar issues relating both to ongoing and terminating plans.)

As noted in the ANPRM (56 FR at 28642), title IV of the Employee Retirement Income Security Act of 1974, as amended, (29 U.S.C. 1301-1461) ("ERISA"), which established the PBGC and its insurance programs, provides that the PBGC is to administer the

statutory termination procedures for all terminating plans covered by the insurance program. See generally ERISA sections 4022, 4041(b), 4041(c), 4042, 4044, 4061. ERISA's "standard termination" procedures apply to terminations of single-employer plans where plan assets are sufficient to satisfy all of the plan's benefit liabilities. ERISA section 4041(b). Under these provisions, the PBGC oversees the termination procedures to ensure that plan participants receive the proper benefits upon termination. See generally ERISA sections 4041(b), 4044; 29 CFR part 2617.

In distributing the plan's assets, the plan administrator is required to provide for all benefit liabilities either (1) by the purchase of "irrevocable commitments" (annuity contracts) from an insurer, or (2) by providing benefits in other forms permitted by the provisions of the plan and any applicable regulations. ERISA section 4041(b)(3); 29 CFR 2617.4. (For purposes of this preamble, the term "annuity contract" is used interchangeably with the term "irrevocable commitment".)

PBGC regulations defined irrevocable commitment as "an obligation by an insurer to pay benefits to a named plan participant or surviving beneficiary, if the obligation cannot be canceled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary." 29 CFR 2618.2; Standard Termination Filing Instructions for PBGC Forms 500 and 501. Thus, in the case of distribution through the purchase of an irrevocable commitment, an "irrevocable commitment" has been purchased, and a distribution occurs, when the obligation to provide a benefit to an individual passes from a pension plan to an insurer. In the case of an alternative benefit, distribution occurs on the date the plan administrator makes the actual distribution to a participant or beneficiary or to another recipient authorized by the participant or beneficiary in accordance with applicable law and regulations.

The final distribution of all plan assets by the plan administrator, followed by the plan administrator's certification that such distribution has been accomplished, completes the plan termination process under a standard termination. ERISA section 4041(b)(3); 29 CFR 2617.20-2617.23. (The PBGC notes that the Standard Termination Filing Instructions for PBGC Forms 500 and 501, page 10, indicate that a distribution of assets by irrevocable commitment does not occur, for purposes of filing the

post-distribution certification ("PDC"), until either the plan administrator or the insurer provides the participant or beneficiary with written notice or a certificate clearly reflecting the insurer's obligation to provide the benefits. Although the written notice or certificate must be provided before the PDC can be filed and the termination thus completed, the distribution normally will occur before that notice or certificate is provided.)

As explained in detail in the ANPRM (56 FR at 28644-28645), the PBGC is not authorized to guarantee benefits provided under irrevocable commitments purchased for participants in terminating plans. When plan assets have been distributed in a standard termination, the plan's benefit liabilities have been satisfied, and PBGC's guarantee therefore ends.

The focus of the ANPRM was on whether the PBGC should impose requirements relating to the selection of the insurer that is to provide annuity contracts to participants of a terminating plan. Among other options discussed in the ANPRM, the PBGC could require that the annuity provider selected by the plan administrator meet specified standards (e.g., by having a specified minimum rating from one or more of the nationally recognized rating services); or that the plan administrator certify that he or she considered certain criteria, or obtained an opinion from an independent expert, in making the selection. The PBGC will consider the public comments submitted in response to the ANPRM, and will then decide whether to issue regulations governing the plan administrator's selection of an insurer.

Need for Regulation

Pending completion of any such rulemaking action, the PBGC has decided to publish rules that would maximize the effectiveness of existing participant protections. This action is consistent with the overall policy of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), which limited the PBGC's role in sufficient (*i.e.*, standard) terminations to one of oversight and, at the same time, gave participants a number of tools to enable them to enforce their statutory rights upon plan termination.

Plan participants who have concerns about the insurer from whom their plan administrator intends to purchase their annuity contracts may have a number of alternatives. They may wish to bring their concerns to the attention of the plan administrator, or, if they believe the plan's fiduciaries may have

breached their fiduciary duties by failing to exercise prudence in selecting an insurer, they may wish to pursue their private rights of action under title I of ERISA. (With certain exceptions, the requirements of title I of ERISA are administrated and enforced by the Pension and Welfare Benefits Administration ("PWBA") of the Department of Labor. If the PBGC, during its processing of a termination, receives notice of a questionable insurer selection, it forwards the information to PWBA so that PWBA can determine if an investigation is warranted.) Finally, participants who are entitled to elect to receive their benefits in a form other than an annuity may wish to consider the identity of the insurer in making their election.

Currently, however, there is no specific requirement that participants timely receive the information they need to make effective use of such alternatives. Some participants may not know that the PBGC's guarantee is extinguished upon the distribution of their benefits through the purchase of an annuity contract, and thus will not appreciate how the selection of an insurer may affect their retirement security. Moreover, plan administrators are not required to inform participants of the identity of the insurer prior to the time an annuity contract is purchased. After the contract is purchased, it may be too late for the plan administrator to respond to participants' concerns by selecting another insurer. This proposed rule would require the plan administrator to inform participants and other affected parties, in a timely manner, of the identity of the insurer or insurers from whom annuities are intended to be purchased. (Elsewhere in today's *Federal Register*, the PBGC is publishing an interim rule that will require plan administrators to apprise participants that the PBGC's guarantee is extinguished upon distribution of their benefit liabilities.)

The PBGC also notes that, since March 1990, it has asked each plan administrator filing a standard termination notice to provide to PBGC the identity of the insurer or insurers who may be providing annuity contracts to the plan's participants. The PBGC asks that this information be provided to it at least 45 days before the expected date of distribution. While the majority of plan administrators have complied with this request, a substantial number have not. This proposed rule would require compliance.

Finally, the PBGC notes that the definitions that have been included in proposed § 2617.41 are basically the

same as the definitions in Standard Termination Filing Instructions for PBGC Forms 500 and 501 and, with one exception, reflect statutory or other regulatory definitions. The definition of "affected party" has been expanded (both in the instructions and in proposed § 2617.41) in accordance with comments received on the proposed termination regulations (52 FR 33318) that a former employee organization may have sufficient ties to a benefit program to be properly included as an affected party. A definition of "date of distribution" has been added for clarification.

Proposed Regulation

This proposed regulation would add a new subpart E to the PBGC's regulation on Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR part 2617). As noted in the ANPRM (56 FR at 28643 n. 1), the PBGC is in the process of revising its regulations on Notice of Intent to Terminate (29 CFR part 2616) and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR part 2617). These regulations were, to a large extent, rendered obsolete by the passage of SEPPAA and the Pension Protection Act (subtitle D of title IX of the Omnibus Budget Reconciliation Act of 1987); the PBGC published a notice of proposed rulemaking (52 FR 33318 September 2, 1987) that would replace these regulations. The PBGC anticipates that it will incorporate the substance of this proposed rule into the final version of its termination regulations and its standard termination forms (PBGC Forms 500 and 501), which will be revised at the time the final regulations are promulgated.

As discussed above, the proposed rule would require plan administrators to provide participants (and other affected parties) with a statement of the identity of the insurer or insurers from whom the plan administrator intends to purchase the annuity contract. Under proposed § 2617.42(d)(5), this information must be included in the notice of intent to terminate that is issued to affected parties at least 60 days in advance of the proposed plan termination date in accordance with ERISA section 4041(a)(2).

The PBGC recognizes that, in many cases, plan administrators will not have determined the identity of the insurer or insurers at that early stage. In such circumstances, §§ 2617.42(d)(6) and (e) permit the plan administrator to so indicate, and to provide the required statement at a later time, but no later than 45 days before the date of distribution, *i.e.*, the date on which the plan administrator purchases the

irrevocable commitment from an insurer. (To avoid the need for a separate mailing, plan administrators may wish to include this statement with other notices that will be mailed or hand-delivered to affected parties, *e.g.*, the notice of plan benefits issued pursuant to ERISA section 4041(b)(2)(B) or the election notices required under the Internal Revenue Code.)

Under proposed § 2617.43(a), the notice to the PBGC stating the identity of the insurer or insurers must be filed concurrently with the standard termination notice failed with the PBGC pursuant to ERISA section 4041(b)(2)(A). However, as with the notice to participants, the PBGC recognizes that plan administrators may not yet have determined the identity of the insurer or insurers, and has similarly provided for a later filing in such circumstances. (Plan administrators who have provided such information in response to PBGC requests therefor would not be required to resubmit it.)

If a plan administrator subsequently decides to purchase annuity contracts from an insurer other than an insurer identified in a notice issued to participants or to the PBGC, the plan administrator would have to issue new notices in accordance with the time limits of proposed §§ 2617.42(e)(2) and 2617.43(b)(2). Under these circumstances, the plan administrator may find it necessary to delay the distribution.

The PBGC considered a requirement that the notices be limited to one named insurer, *i.e.*, the insurer from whom the plan administrator has decided to purchase the annuity contract. While such a requirement could provide participants with useful information, it could also lead to some disruption in the process whereby plan administrators purchase annuity contracts. A plan administrator may be seeking bids from more than one insurer, and thus may find it difficult to identify the insurer selected 45 days before the irrevocable commitments are purchased. Accordingly, the PBGC decided, in its initial proposal for these notice requirements, to permit the plan administrator to identify more than one insurer. The PBGC excepts that plan administrators will limit the list of insurers to a reasonable number so that participants may play a meaningful role in the insurer selection process. The PBGC specifically requests interested persons to submit their views on this subject.

Further, the PBGC notes that participants who wish to consider the identity of the insurer in electing their

benefits in the form of an annuity or in an alternative form will need to know, reasonably in advance of the distribution date, which of the listed insurers has been, or will be, selected. The PBGC expects that plan administrators will voluntarily provide such information to participants, upon request, in a timely manner.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "major rule" for the purpose of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act of 1980 that these rules will not have a significant economic impact on a substantial number of small entities. The costs attendant to including the required statements in a notice of intent to terminate for small pension plans (those with fewer than 100 participants) will be insignificant since the notice must be prepared under the statutory provisions and the inclusion of this additional information will require minimal time and expense. If the information must be provided at a later date, the regulation would permit it to be included with notices that are required under other statutory or regulatory provisions, thus making the cost minimal. Therefore, compliance with sections 603 and 604 of the Act is waived.

OMB Clearance of Information Collection

The collection of information requirements contained in this regulation, as amended by a "Notice of Interim Procedures" (51 FR 12491, April 10, 1986) and a "Notice of Revised Termination Rules" (53 FR 1904, January 22, 1988), and as included in PBGC Forms 500 and 501, have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) for use through March 31, 1993, OMB control number 1212-0036. The PBGC has requested the approval of additional paperwork under this proposed rule.

The PBGC estimates that the aggregate burden on plan administrators in fulfilling the additional information collection imposed by this proposed rule

is 1,333 hours, based on 8,000 respondents and an average response time of .1666 hours. Comments concerning the collection of information under this rule should be directed to the Office of Management and Budget, Paperwork Reduction Project (1212-0036), Washington, DC 20503.

List of Subjects in 29 CFR Part 2617

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

In consideration of the foregoing, the PBGC proposes to amend part 2617 of subchapter C of chapter XXVI, title 29, Code of Federal Regulations, in the following manner:

1. The authority citation for part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

2. Part 2617 is amended to revise new Subpart E as follows:

PART 2617—DETERMINATION OF PLAN SUFFICIENCY AND TERMINATION OF SUFFICIENT PLANS

Subpart E—Notice of Intent To Terminate and Notice to PBGC of Insurer Selection in Standard Termination

Sec.

- 2617.40 Purpose and scope.
- 2617.41 Definitions.
- 2617.42 Notice of intent to terminate.
- 2617.43 Notice to PBGC of insurer selection.

Subpart E—Notice of Intent To Terminate and Notice to PBGC of Insurer Selection in Standard Termination

§ 2617.40 Purpose and scope.

(a) **Purpose.** The purpose of this subpart is to prescribe minimum rules for the contents of and procedures for issuance of the notice of intent to terminate a single-employer defined benefit pension plan in a standard termination, and to prescribe rules for the plan administrator to file with the PBGC a notice identifying the insurer or insurers from whom the plan administrator intends to purchase irrevocable commitments to provide annuity benefits under the terminating plan.

(b) **Scope.** This subpart applies to any single-employer plan covered under section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a standard termination is issued on or after the effective date of this subpart.

§ 2617.41 Definitions.

For purposes of this subpart:

Affected party means, with respect to a single-employer plan, each participant, each beneficiary of a deceased participant, each alternate payee (as defined in section 206(d)(3)(K) of the Act) under an applicable qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), and each employee organization representing participants. An employee organization that represented participants under the plan within five years prior to the issuance of a notice of intent to terminate (or, if more than one, the last such employee organization) is deemed to be an affected party. In connection with any notice required under this subpart, if an affected party has designated in writing another person to receive the notice, then any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986).

Date of distribution means—

(a) For irrevocable commitments, the date on which the plan administrator purchases the irrevocable commitment from an insurer to provide benefit liabilities under the plan, or

(b) For benefit liabilities in a form other than an annuity, the date on which benefits are delivered to the participant or beneficiary (or to another recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Notice of intent to terminate means the 60-day advance notice to affected parties advising of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.42 of this part.

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate.

Standard termination means the voluntary termination, in accordance with section 4041(b) of the Act, of a single-employer plan that is sufficient for benefit liabilities (determined as of

the termination date) when the final distribution of assets occurs.

Standard termination notice means the notice provided to the PBGC as required by section 4041(b)(2)(A) of the Act. PBGC Form 500 is the standard termination notice.

§ 2617.42 Notice of intent to terminate.

(a) *General rule.* At least 60 days before the proposed termination date of a plan to which this subpart applies, the plan administrator shall issue a notice of intent to terminate to each affected party containing all of the information specified in paragraph (d) of this section.

(b) *Method of issuance.* The plan administrator shall issue the notice of intent to terminate to each affected party individually. Each notice shall be either hand delivered or delivered by first-class mail or courier service to the affected party's last known address.

(c) *When issued.* The notice of intent to terminate is deemed issued on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator may include in the notice of intent to terminate any information that the plan administrator deems necessary or advisable, and shall include the following:

(1) Information needed to identify the plan;

(2) A statement that a standard termination of the plan is intended and the proposed termination date;

(3) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant;

(4) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide annuities or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's benefit ends; and

(5) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer, the name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments;

(6) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer and the plan administrator has not identified an insurer or insurers at time the notice of

intent to terminate is issued, a statement that—

(i) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan;

(ii) The insurer or insurers have not yet been identified, and

(iii) They will be notified of the name and address of the insurer or insurers at a later date (but no later than 45 days before the date of distribution).

(e) *Supplemental notice requirements.*

(1) The plan administrator shall issue a supplemental notice or supplemental notices to each affected party in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of intent to terminate is issued, or

(ii) The plan administrator notifies affected parties of the insurer or insurers from whom he or she intends to purchase the irrevocable commitments, either in the notice of intent to terminate or in a later notice, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraphs (b) and (c) of this section no later than 45 days before the date of distribution and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(3) Any supplemental notice or notices meeting the requirements of paragraph (e)(2) of this section shall be deemed a part of the notice of intent to terminate.

§ 2617.43 Notice to PBGC of insurer selection.

(a) *General rule.* Concurrently with the filing of the standard termination notice, the plan administrator shall file with the PBGC a statement as to whether any of the benefits of the terminating plan may be provided in annuity form and, if so, the name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments. Notwithstanding the preceding sentence, if the plan administrator has not yet identified an insurer or insurers at the time the standard termination notice is filed, the plan administrator shall instead notify the PBGC at a later date, but no later than 45 days before the date of distribution, of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(b) *Supplemental notice requirements.* A plan administrator who has notified the PBGC of the insurer or insurers from whom he or she intends to purchase irrevocable commitments, either concurrently with the standard termination notice or in a later notice, and who subsequently decides to select a different insurer, shall file a supplemental notice with the PBGC in accordance with the rules in paragraphs (b)(1) and (b)(2) of this section.

(1) Any supplemental notice shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase irrevocable commitments.

(2) Any supplemental notice shall be filed with the PBGC no later than 45 days before the date of distribution.

(c) *Form of notice and identifying information.* Any notice or notices required to be filed with the PBGC pursuant to paragraphs (a) or (b) of this section shall contain information identifying the plan sponsor and the plan by name, address, and EIN/PN (including PBGC case number, if applicable) and may be in the form of a statement attached to the standard termination notice, if filed concurrently with that notice, or, if not, in the form of a letter addressed to: Pension Benefit Guaranty Corporation, COCD/Code 25430, 2020 K Street, NW., Washington, DC 20006.

Issued in Washington, DC this 12th day of November, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-27551 Filed 11-14-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Program (hereinafter, the "Kansas Program") under the Surface Mining Control and Reclamation Act of

1977 (SMCRA), 30 U.S.C. 1231 *et seq.* The proposed amendment pertains to eligible lands and water, project evaluation, rights of entry, liens, appraisals on private lands, and satisfaction of liens. The amendment is intended to revise the State program to improve operational efficiency.

This notice sets forth the times and locations that the Kansas Program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. December 16, 1991. If requested, a public hearing on the proposed amendment will be held on December 10, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on December 2, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas Program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374-6405. Kansas Department of Health and Environment, Mining Section, Bureau of Environmental Quality, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

On February 1, 1982, the Secretary of the Interior conditionally approved the Kansas AMLR Program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas AMLR Program, can be found in the June 3, 1983, *Federal Register* (48 FR 24876). Subsequent actions concerning Kansas' program amendments can be found at 30 CFR 916.20.

II. Proposed Amendment

By letter dated October 25, 1991, and corrected revisions received October 31, 1991, (Administrative Record No. AML-KS-156), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment on its own initiative. Kansas proposes to rescind and replace portions of the regulations within Kansas Administrative Regulations (K.A.R.) at K.A.R. Chapter 47, Article 16. The regulations that Kansas proposes to amend contained in: K.A.R. 47-16-1, Eligible lands and water; K.A.R. 47-16-2, Reclamation project evaluation; K.A.R. 47-16-3, Consent to entry; K.A.R. 47-16-4, Entry for study or exploration; K.A.R. 47-16-5, Entry and consent to reclaim; K.A.R. 47-16-6, Liens; K.A.R. 47-16-7, Appraisals; and 47-16-8, Satisfaction of liens.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.s.t. December 2, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those

who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be posted at the locations listed under "**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1991.

Raymond L. Lowrie,
Assistant Director, Western Support Center.
[FR Doc. 91-27445 Filed 11-14-91; 8:45 am]
BILLING CODE 4310-05-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 83

RIN 3067-ABG7

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule removes the Federal Crime Insurance Program (FCIP) rates which apply to commercial properties located in eligible states. This is being recommended to expedite future changes to the rates. If approved, rates will be announced in the future by notices to be published in the *Federal Register*.

DATES: Comments must be received on or before January 14, 1992.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Telephone Number: (202) 646-4107.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., room 433, Washington, DC 20472, Telephone Number (202) 646-3440.

SUPPLEMENTARY INFORMATION: These amendments to the FCIP regulations are the result of the experience gained over the past nineteen years the program has been in operation.

The current commercial rating program under the FCIP was instituted in 1985. That change was instituted to more closely realign the Program with the underwriting and rating methods used by the private insurance sector. The Program was expanded at that time from 3 classes to 6 premium classes. Premium class relativities were based on industry rating values, the amount of insurance relativities, gross receipts classifications, and the philosophy of a single countrywide rating territory. At that time, the entire rating structure was adjusted to produce a 35% revenue level increase.

In 1987, rates were uniformly increased by 10% and risk and alarm classifications were revised. In 1988, the assignment of business classes to premium was reviewed and changed. In 1989, another uniform rate increase of 5% was made.

In 1990, commercial rates were increased by 15%, businesses were reclassified, and definitions of alarm systems were modified.

In spite of the above revisions, in order to approach a more self-sustaining status, the Federal Insurance Administration will need to impose an overall rate increase of approximately 15% to offset heavy losses under commercial coverage and the higher-than-average administrative expenses associated with operating a single-line residual market program.

However, inasmuch as the enabling legislation that authorized the Program requires that crime insurance be made available at affordable rates, for purposes of comparison the FIA has maintained an ongoing study of rating of crime insurance coverages provided by the voluntary insurance market.

In this regard, the recent study conducted by FCIP's servicing carrier, NCSI, and its actuary, Tillinghast, indicate that the Insurance Services Office (ISO) advisory rates have increased five times since 1985, a rate of increase far in excess of FCIP rates. However, although a substantial FCIP rate increase would be appropriate, the Administrator proposes a rate increase of only 15%, the maximum allowable by recent controlling legislation, and for commercial classes only. Residential risk experience has been self-sustaining and therefore, is not subject to an increase.

FEMA has determined, based upon an Environmental Assessment, that the final rule does not have significant

impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket files and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 10472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

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

List of Subjects in 44 CFR Part 83

Crime insurance.

Accordingly, 44 CFR part 83 is amended as follows:

PART 83 [AMENDED]

1. The authority citation for part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 83.25 is amended by revising paragraph (e) introductory text to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks:

* * * * *

Dated: September 17, 1991.

C. M. "Bud" Schauerte,
Federal Insurance Administrator.

[FR Doc. 91-26128 Filed 11-14-91; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 91-50, Notice 2]

Light Truck Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments; correction.

SUMMARY: On October 8, 1991, NHTSA published in the **Federal Register** (56 FR 50694) a request for comments concerning light truck average fuel economy standards. This notice corrects a typographical error in that request for comments.

FOR FURTHER INFORMATION CONTACT: Mr. Orron E. Kee, Chief, Motor Vehicle Requirements Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-0846.

The following correction is made in FR Doc. 91-24015 appearing on 50694 in the issue of October 8, 1991:

1. On page 50697, column two, question 11, "Questions 3, 5, and 6" is corrected to read "Questions 3, 4, and 6".

Issued on November 8, 1991.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 91-27458 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB67

Endangered and Threatened Wildlife and Plants; Proposal To List the Kanab Ambersnail as Endangered and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis*) to be an endangered species and to designate critical habitat pursuant to the Endangered Species Act of 1973 (Act), as amended. Only two populations of this snail are known to exist, both on wetlands on private lands in Kane County, Utah. A status survey completed in 1991 discovered that one population is nearly extirpated, while the other population has been subjected to major habitat alteration and destruction. An emergency rule determining the Kanab ambersnail to be endangered was published on August 8, 1991 (56 FR 37668) and will expire on April 3, 1992. The Service seeks data and comments on this proposed rule.

DATES: Comments from all interested parties must be received by January 14, 1992. Public hearing requests must be received by December 30, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Clark D. Johnson at the above address, telephone 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

The Kanab ambersnail is a terrestrial snail in the family Succineidae. It has a mottled grayish-amber to yellowish-amber colored shell. The shell is dextral, thin-walled, with an elevated spire and a broad, patent (expanded) aperture. Fully mature individuals are about 14 to 19 mm (½ to ¾ inch) long, 7 to 9 mm (¼ to ½ inch) in diameter, with 3½ to 3¾ whorls in a drawn out spire. Its eyes are borne at the ends of long peduncles (stalks), while the tentacles are reduced to small protuberances at the base of the eye stalks (Pilsbry 1948, Clarke 1991).

Specimens of the Kanab ambersnail were first collected in 1909 by James Ferriss from "The Greens," 6 miles above Kanab, on Kanab Wash, on a wet ledge among moss and cypripediums" (Ferriss 1910, Pilsbry 1948). These specimens were originally placed in the species *Succinea hawkinsi* (Ferriss 1910, Chamberlin and Jones 1929). Henry Pilsbry (1948) transferred these specimens to the genus *Oxyloma* and erected the subspecies *kanabensis* in the species *haydeni* for them. Clarke (1991) notes that Pilsbry's decision to accord the Kanab ambersnail subspecific status was based on shell features alone, and that, as Pilsbry himself noted, its taxonomic status should be reevaluated. Clarke (1991) suggests that the Kanab ambersnail may deserve species status. For the purpose of this listing action, the Service will recognize this taxon at the subspecies level. If the Kanab ambersnail is later recognized as a species, this will not affect its designation as endangered.

The Kanab ambersnail lives in marshes watered by springs and seeps at the base of sandstone cliffs. It is absolutely associated with a perennially wet soil surface or shallow standing water. None are found in drier areas, even under logs or in other

microhabitats commonly frequented by other land snails (Clarke 1991).

The presence of cattail (*Typha domingensis*), or at least the permanently wet ground which cattail indicates, is believed to be a critical component of the species habitat. The Kanab ambersnail is most densely aggregated under fallen cattail stalks at the edges of thick cattail stands. Cattails may provide crucial vegetative cover for the snails. The American robin (*Turdus migratorius*) has been observed to feed on the Kanab ambersnail and may be the snail's principal natural predator (Clarke 1991). The snails are also frequently seen just within the mouths of vole burrows.

The Kanab ambersnail is known from two populations about 2.0 km (1.25 miles) apart. Both populations are on privately owned lands. Other likely sites in the area have been searched on foot by Blaine Lunceford, a knowledgeable local biologist from Kanab, Utah, and during the recent status survey effort (Clarke 1991), but no other Kanab ambersnail colonies have been discovered.

The larger Kanab ambersnail population is located in Three Lakes Canyon, a tributary drainage of Kanab Creek, about 10 km (6 miles) northwest of the town of Kanab, Utah. The Kanab ambersnail occurs throughout the marshes and wet meadows which surround the "Three Lakes" ponds, an area about 1.3 km (0.8 miles) long and up to 90 m (100 yards) wide.

Note: The estimated size of this habitat has increased relative to the habitat size estimated in the emergency rule as a result of more recent information.

This population was estimated to have as many as 100,000 individuals in June 1990. Soon thereafter, a significant portion of this habitat was destroyed by earth-moving equipment (Clarke 1991, U.S. Fish and Wildlife Service 1991). In February 1991, the landowners were alerted by a Service representative to the presence of this imperiled snail on their property. At that time, the owners indicated a willingness to conserve the Kanab ambersnail.

The smaller, nearly extirpated population occurs in a marsh, watered by a seep, at the foot of a cliff in Kanab Creek Canyon. The Kanab ambersnail was once common at this site. Though once larger, this habitat was discovered to have been reduced to a long narrow marsh measuring about 46 m (150 feet) long and 15 cm (6 inches) wide in 1990. The marsh had been partially dewatered by a ditch and drainpipe installed by the landowner to provide water for domestic livestock which graze in a field

between the marsh and Kanab Creek. An intensive search of this habitat in 1990 revealed only three live snails (Clarke 1991).

Federal action on this species began on May 22, 1984, when the Service published a notice of review of invertebrate wildlife for listing as endangered or threatened species, which included the Kanab ambersnail as a category 2 species (49 FR 21664). Category 2 comprises species for which the Service has information indicating the appropriateness of a proposal to list the species as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. On January 6, 1989, the Service published an updated notice of review of animals for listing as endangered or threatened which maintained the Kanab ambersnail as a category 2 species (54 FR 554).

In 1990, the Service commissioned a status survey of candidate Utah snails, including the Kanab ambersnail. The final report was completed in April 1991 and concluded that the Kanab ambersnail was in imminent danger of extinction and that immediate action should be taken to save it (Clarke 1991). The Service considers the information developed in the 1991 report sufficient to elevate the Kanab ambersnail from a category 2 to a category 1 species. The recent precipitous decline of the snail, combined with the species' extreme vulnerability to further habitat modification or other catastrophes prompted the Service to emergency list the Kanab ambersnail as endangered on August 8, 1991. This emergency protection expires on April 3, 1992.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis* Pilsbry) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. As noted previously, the Kanab ambersnail is absolutely associated with a perennially wet soil surface or shallow standing water at the two locations described

earlier. This habitat type is rare in extreme south-central Utah.

The smaller population in Kanab Creek Canyon was much bigger previously, but the recent dewatering of this habitat to provide water for livestock has nearly extirpated this population.

The larger population in Three Lakes Canyon was estimated to number 100,000 snails in June 1990. Early in 1991, the open marshy area above the uppermost of the three lakes was graded in an attempt to smooth its contours to improve its aesthetic appeal for future development purposes. The private landowner had seriously contemplated draining the largest pond, which could devastate the snail population, but appears to have abandoned the idea for the time being (U.S. Fish and Wildlife Service 1991). The private landowner also has plans for building a retirement home and/or developing a recreational vehicle park and campground in the Three Lakes area, which could result in further habitat alteration or destruction.

Historically, the snail's habitat has been used for grazing purposes, which could have impacted the snails in the past and may have been a factor in the species' current limited distribution. A low level of grazing continues in the species' known habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Overutilization is not known to be a threat. However, the Kanab ambersnail may be vulnerable to collecting either for scientific or private shell collections. Due to its size, the smaller population is exceptionally vulnerable to extinction from collection.

C. Disease or predation. Disease and predation are not believed to be major problems affecting the continued survival of the Kanab ambersnail. The snail is preyed upon by the American robin (*Turdus migratorius*), but this is a natural condition. At present, predation is not thought to be significant to the species, provided crucial environmental factors that reduce the degree of predation are not significantly altered, such as loss of vegetative cover.

D. The inadequacy of existing regulatory mechanisms. No Federal or State laws or regulations mandate protection of the Kanab ambersnail or its habitat. The known populations occur on private lands managed primarily for commercial or agricultural uses.

E. Other natural or manmade factors affecting its continued existence.

Almost all known individuals of the Kanab ambersnail are found in the Three Lakes Canyon population. This extremely localized population may be

vulnerable to natural disasters such as extreme drought, flood, fire, or disease. It can also be jeopardized by human activities such as periodic burning to improve the area for cattle grazing or other economic activity, or poisoning of the ponds so that more desirable sportfish might thrive (Clarke 1991). The Kanab Creek population may be nearly extirpated, but is potentially important as a source of genetic diversity (Clarke 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Kanab ambersnail as an endangered species. It is restricted to two known populations. Habitat loss and degradation have already drastically reduced population levels at the Kanab Creek Canyon site and may have significantly reduced population numbers at the Three Lakes Canyon site. Planned development in the Three Lakes Canyon site could result in further habitat loss and degradation. Without the protections of the Act, the Kanab ambersnail is highly susceptible to additional habitat and population losses. Endangered status, which means that the snail is in danger of extinction throughout a significant portion of its range, is a more accurate assessment of the species' status than threatened status.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable with the determination that a species is endangered or threatened. The Service believes that it is not prudent to determine critical habitat for the smaller population due to the relatively greater threat posed by possible overcollection for this population. The rulemaking identifies the smaller population's

habitat as being adjacent to sandstone cliffs in Kanab Creek Canyon. If the general area was clearly delineated in a critical habitat map, it would be a simple matter to locate the smaller population by walking along the foot of the cliffs. It would take only one instance of collection to completely eliminate the smaller population, which contained three live individuals in 1990. If the smaller population was genetically different from the larger population, this would be a significant loss to the subspecies' gene pool.

Though it also would be a simple matter to find the larger population if a critical habitat map was published, the relative threat posed by collection is significantly smaller. Collection is unlikely to result in the extermination of a population estimated to number 100,000 individuals in 1990. Therefore, critical habitat is being proposed for the Kanab ambersnail to include the site containing the Three Lakes Canyon population, located approximately 6 miles north northwest of the town of Kanab, Utah, in the wet meadows and marshes surrounding the "Three Lakes" ponds between U.S. Highway 89 and the sandstone cliffs west of the highway. This habitat is watered by seeps from the adjacent sandstone cliffs. This area is about 1.3 km (0.8 miles) long and up to 90 m (100 yards) wide, comprising an area of up to 12 hectares (29 acres), including the "Three Lakes" ponds. Its precise location may be found in the "Proposed Regulations Promulgation" section of this rulemaking.

It is crucial that these seeps and their associated wetlands be maintained in a natural condition in order to preserve the Kanab ambersnail. The Kanab ambersnail is absolutely associated with a perennially abundant wet soil surface or shallow standing water, and is most abundant at the base of cattail stalks. This microhabitat provides the species food and shelter and is necessary to enable the species to complete its life-cycle events of growth, breeding, reproduction, and wintering with protection from biotic and abiotic environmental factors such as predators, and temperature and moisture extremes.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities which may adversely affect proposed critical habitat include: (1) Surface disturbance of the occupied wet meadow and marsh habitat of the species, (2) dewatering of the species

habitat, and (3) water quality impacts from human activities. The first two activities already have affected the habitat of the Kanab ambersnail; the third is a potential threat to the habitat of the Kanab ambersnail.

The activities which may be affected by the designation of critical habitat would be those actions authorized, funded, or carried out by a Federal Agency which may affect critical habitat. If the private landowners applied for a 404 permit issued by the Corps of Engineers under the authority of the Clean Water Act to dredge or fill the wetlands comprising critical habitat, then the proposed activity would need to be reviewed to determine if it would destroy or adversely modify the critical habitat. In addition, if the private landowners avail themselves of assistance offered by the Soil Conservation Service, then the assistance may need to be reviewed if it may affect critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained before making a decision on whether to issue a final rule.

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 taking and harm 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 insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service. Because the Kanab ambersnail was emergency listed on August 8, 1991, the requirement for consultation under section 7(a)(2) of the Act applies to this subspecies until the emergency rule expires on April 3, 1992.

All known populations of the Kanab ambersnail are on private lands. The Federal Government may have programs or regulatory authority capable of influencing privately undertaken activities in the habitat of the Kanab ambersnail. Private activities involving dredge and fill of wetlands would be required to have a 404 permit. In addition, the landowners may avail themselves of technical assistance offered by the Soil Conservation Service for onfarm soil and water conservation programs which may affect the snail.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia (telephone 703/358-2093; FTS 921-2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the

scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Kanab ambersnail;

(2) The location of any additional populations of the Kanab ambersnail and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the Kanab ambersnail; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on the Kanab ambersnail will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (see ADDRESSES above).

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 (49 FR 49244).

References Cited

Chamberlin, R.V. and D.T. Jones. 1929. A descriptive catalog of the Mollusca of Utah. *Bull. of the Univ. of Utah* 19(4):i-x+1-203.

Clarke, A.H. 1991. Status survey of selected land and freshwater gastropods in Utah. Unpublished report prepared for the U.S. Fish and Wildlife Service, Denver, Colorado. 70 pp + cxii.

Ferriss, J.H. 1910. A collecting excursion north of the Grand Canyon of the Colorado. *The Nautilus* 23:109-112.

Pilsbry, H.A. 1948. Land Mollusca of North America. The Acad. of Nat. Sci. of Philadelphia Monographs. Vol. II (Part 2): 797-798.

U.S. Fish and Wildlife Service. 1991. Supplemental status report for the Kanab ambersnail (*Oxyloma haydeni kanabensis*). U.S. Fish and Wildlife Service. Salt Lake City, Utah. 3 pp.

Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524-4430 or FTS 588-4430).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

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

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "SNAILS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS	*	*	*	*	*	*	*
Snail, Kanab amber	<i>Oxyloma haydeni kanabensis</i>	U.S.A. (UT)	NA	E	431	NA	NA
	*	*	*	*	*	*	*

3. It is proposed to amend § 17.95 by adding a new section (f) and adding critical habitat of the Kanab ambersnail (*Oxyloma haydeni kanabensis*).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Snails*

Kanab Ambersnail (*Oxyloma haydeni kanabensis*)

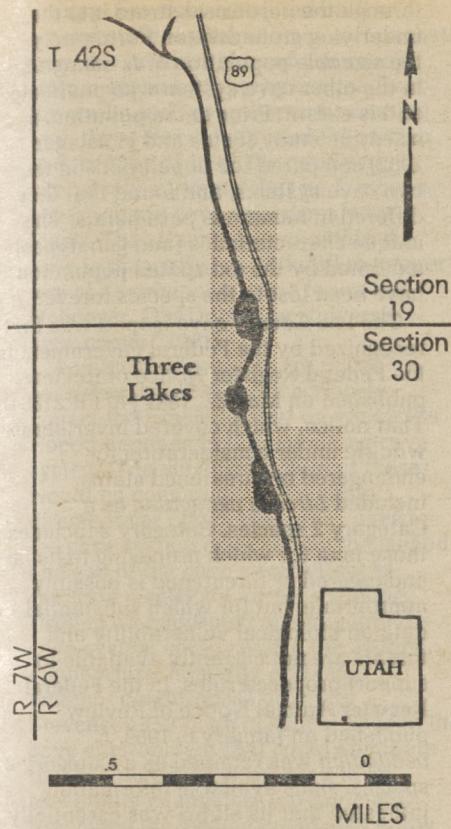
Utah, Kane County: Three Lakes Canyon, the "Three Lakes" ponds and adjacent wetlands and seeps in the E 1/4 SE 1/4 SW 1/4 Sec. 19, E 1/2 NE 1/4 NW 1/4 Sec. 30, E 1/2 SE 1/4 NW 1/4 Sec. 30, and W 1/2 SW 1/4 NE 1/4 Sec. 30, T. 42 S., R. 6 W., of the Salt Lake Meridian between U.S.

Highway 89 and the sandstone cliffs west of the highway.

Constituent elements include: Wetlands adjacent to water seeps in sandstone cliffs and surrounding the "Three Lakes" ponds, and water seeps in sandstone cliffs.

* * * * *

BILLING CODE 4310-55-M



BILLING CODE 4310-55-C

Dated: October 10, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-27495 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposal To List the Lee County Cave Isopod (*Lirceus usdagalun*) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Unlike most other members of its genus, *Lirceus usdagalun* has adapted to a totally subterranean aquatic existence. It is an eyeless, unpigmented isopod (a kind of crustacean) originally known from two cave systems in Lee County, Virginia. It has been extirpated from one of these systems by pollution of the underground stream it inhabited. In its remaining cave system, the isopod is potentially threatened by the proposed construction of a prison facility and an airport in the cave vicinity. These construction projects could degrade groundwater quality sufficiently to threaten the isopod's survival, unless construction plans provide for its protection. The isopod is also potentially threatened by a landowner's plan to use the cave's stream to generate electricity for a cabin proposed to be built above the cave. This project would require careful planning, to avoid adversely affecting the isopod. This proposal, if made final, would implement protection provided by the Endangered Species Act of 1973, as amended (Act), for *Lirceus usdagalun*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 14, 1992. Public hearing requests must be received by December 30, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (301) 269-5448, during normal business hours.

SUPPLEMENTARY INFORMATION: Background

Among the rare creatures discovered by Dr. John Holsinger, during his extensive investigations of the caves in the central Appalachian region, was a freshwater isopod crustacean of the genus *Lirceus*. Unlike any of the other 13 species known to comprise the genus at that time, this species was troglobitic—that is, an obligate cave-dweller. In adapting to the lightless, unchanging cave environment, this species, over evolutionary time, lost its eyes and pigmentation. The species was named "usdagalun", the Cherokee word for "cave" or "hole under rock" (Holsinger and Bowman 1973).

Animals in the genus *Lirceus* occur in parts of the eastern and mid-western United States and the Great Lakes region of southern Ontario, Canada, in a variety of aquatic habitats, including springs, seeps, streams, ponds, sloughs, and drain outlets (Williams 1972). Some other species have been found in cave streams, but all species described prior to *L. usdagalun* have eyes and pigment and none are considered obligate cave-dwellers (Hubricht and Makin 1949). Subsequent to the discovery of *L. usdagalun*, an additional troglobitic species has been described (Estes and Holsinger 1976).

Lirceus usdagalun is an eyeless, unpigmented species measuring 4 to 7.5 millimeters (0.2–0.3 inches) in length. The body is about 64% longer than wide, and the head is about 1/2 as long as wide, with deep incisions on its lateral margins. The species was known historically from two cave systems, located approximately 10 kilometers (6 miles) apart, in Lee County, Virginia (Holsinger and Culver 1988).

The caves originally inhabited by *L. usdagalun* are developed in a band of low-dipping, middle-Ordovician limestone on the southern flank of the Cedar Syncline (Holsinger and Bowman 1973). This broad band of limestone, which extends through south-central Lee County, is riddled with caves, sinks and ravines, typical for an area underlain by a water-soluble, limestone substrate. Such areas are particularly susceptible to contamination of groundwater from surface contaminants leaching through the porous substrate (Holsinger 1979).

Lirceus usdagalun has been extirpated from one of the two cave systems it originally occupied by groundwater pollution. This pollution resulted when large quantities of sawdust, by-product of a local sawmill operation, were piled on the ground surface over the cave. Rainwater leached tannins and other toxins from the sawdust and transferred these

through the porous substrate into the underlying groundwater. Fortunately, the sizeable population of *L. usdagalun* in the other cave system was unaffected and is extant. Prior to the pollution, a scientific study (Estes and Holsinger 1982) compared the populations in the two cave systems, and found that they differed in numerous parameters. The unique characteristics (and genotypes) exhibited by the extirpated population have been lost to the species forever.

The Lee County cave isopod was first recognized by the Federal government in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included *Lirceus usdagalun* as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989, *L. usdagalun* was retained as a Category 2 species, since available information indicated that its status was essentially unchanged from 1984; it was rare, but there were no known threats to its survival. Since that time, numerous threats to the species' continued existence have appeared. One of these, the above-mentioned sawdust stockpiling, has already resulted in the extirpation of the species from half its originally known range. Several additional factors, described below, threaten the isopod in its one remaining cave system.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lee County cave isopod (*Lirceus usdagalun*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. *Lirceus usdagalun* has been extirpated from half of its known historic range by the degradation of its aquatic habitat at one of the two cave systems it was known to

occupy. Sawdust was piled on the ground surface above the cave. Leachate from the sawdust entered the cave's stream system, stripping oxygen from the water and severely contaminating both the water column and the stream bed. In May of 1990, the cave was intensively surveyed, but no *Lirceus* or other aquatic cave organisms were found. The stream system within the cave is presently too polluted to support any of its original aquatic fauna (J.R. Holsinger, Old Dominion University, pers. comm., 1991).

A number of projects are under consideration that could seriously impact the fragile habitat on which the isopod depends in the remaining cave system. The most immediate of these would be construction of a cabin directly over one of the three caves in the cave system occupied by the isopod, and use of the cave stream flow to generate electricity for the dwelling. Drilling an additional opening into the cave system could change the airflow, temperature, humidity and other ambient conditions (Tuttle and Stevenson 1977), an abrupt change in the cave environment that could eliminate the isopod, which is adapted to an essentially changeless environment. Breaching the system could also allow the invasion of surface organisms, including potential predators and competitors that could disrupt the relatively simple and stable faunal cave community (Culver 1976). It is also very likely that the construction process itself would introduce sediments and degrade water quality of the cave's stream system. Any septic field of the cabin could also influence the stream's water quality, especially in light of the porosity of the local substrate.

Also of concern are two major development projects, an airport and a prison facility, proposed to be constructed in the vicinity of the isopod's remaining cave system. Some of the alternatives under consideration would locate these facilities over or adjacent to large sinkholes. Such a location would facilitate sediments or pollutants entering the groundwater during construction or operation phases potentially affecting the isopod.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Lirceus usdagulun* is of no perceived value to hobbyist collectors. The only interest in collection of the species would be for purely scientific purposes, and these would be coordinated with State and Federal authorities.

C. *Disease or predation.* This isopod is undoubtedly a food item in the diet of certain natural predators, including cave

salamanders and possibly crayfish (Holsinger pers. comm., 1991). However, this naturally occurring predation is not currently considered a threat to the isopod's continued existence. There are no known diseases affecting the species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Virginia's Cave Protection Act (Title 10, chapter 12.2 section 10-150.11-10.150.18) states that it is "unlawful to remove, kill or otherwise disturb any naturally occurring organisms found in any cave." However, under certain circumstances, this law may not apply to the owner of a cave. There are no other known local, State or Federal laws protecting this species.

E. *Other natural or manmade factors affecting its continued existence.* Although not presently a problem, *L. usdagulun* could be adversely affected by an increase in human foot traffic through their cave. The isopods could be affected directly, or indirectly, by increased siltation of the stream they occupy.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lirceus usdagulun* as endangered. The species has been extirpated from one of the two caves systems it was known to occupy, and it faces several threats that, without Federal protection and careful planning, could extirpate it from its remaining cave system. In the view of the Service, the isopod is in imminent danger of extinction throughout the remainder of its known range. To list this species as threatened would not accurately reflect the immediacy of the threats it faces. Clearly, endangered status is the most appropriate designation for *Lirceus usdagulun*.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is neither prudent nor beneficial for *Lirceus usdagulun*.

As noted under Factor E above, the isopod and its habitat could be adversely affected by an increase in foot traffic through the stream it inhabits. The location of the cave system is not widely known at present. Publication of a precise map and locality description could increase the incidence of unauthorized visitation to the cave

system, with possible adverse consequences for the isopod and its habitat. Such unauthorized intrusion would be extremely difficult to regulate owing to the remote location of the cave system and to the existence of multiple entrances. For this reason, the Service concludes that it is not prudent to designate critical habitat for *Lirceus usdagulun*.

In addition to the possible adverse consequences of designating critical habitat, the Service believes that in this case, the isopod would receive no additional protection from the designation of critical habitat. All involved local, State and Federal agencies and principal landowners have been notified of the isopod's location and importance of protecting its habitat. Because the isopod is now known from only a single cave system, any adverse modification of this system would be likely to jeopardize the continued existence of the species. The Service believes that habitat protection for this species will be best accomplished through the section 7 jeopardy standard and the section 9 prohibitions against take. In summary, it would be of no benefit, and it is not considered prudent, to determine critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed

subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The prison and the airport proposed to be constructed in the vicinity of the isopod's habitat are under the jurisdiction of the Federal Bureau of Prisons and the Federal Aviation Administration, respectively. These agencies are aware of the existence of the isopod and of the need to incorporate groundwater protection measures into their project plans.

The listing of this isopod would also bring sections 5 and 6 of the Endangered Species Act into full effect on its behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Service may grant funds to affected States for management actions aiding the protection and recovery of the species.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap or collect; or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, any listed species. It is also illegal to possess, sell, deliver, carry, transport or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances, namely, for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Regulations governing permits are at 50 CFR 17.22 and 17.23.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Annapolis Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Culver, D.C. 1976. The evolution of aquatic cave communities. *Amer. Nat.* 110(976): 945-957.

Estes, J.A. and J.R. Holsinger. 1976. A second troglobitic species of the genus *Lirceus* (Isopoda, Asellidae) from southwestern Virginia. *Proc. Biol. Soc. Wash.* 89(42): 481-490.

Estes, J.A., and J.R. Holsinger. 1982. A comparison of the structure of two populations of the troglobitic isopod crustacean *Lirceus usdagalun* (Asellidae). *Pol. Arch. Hydrobiol.* 29(2): 453-461.

Holsinger, J.R. 1979. Freshwater and terrestrial isopod crustaceans. IN: D.W. Linzey, ed. *Proceedings of a Symposium on Endangered and Threatened Plants and Animals of Virginia*. Blacksburg, Virginia: Virginia Polytechnic Institute and State University. pp.130-148.

Holsinger, J.R., and T.E. Bowman. 1973. A new troglobitic isopod of the genus *Lirceus* (Asellidae) from southwestern Virginia, with notes on its ecology and additional cave records for the genus in the Appalachians. *Int. J. Speleol.* 5 (1973): 261-271.

Holsinger, J.R., and D.C. Culver. 1988. The invertebrate fauna of Virginia and a part of eastern Tennessee: Zoogeography and ecology. *Brimleyana* 14: 1-162.

Hubricht, L. and J.G. Makin. 1949. The freshwater isopods of the genus *Lirceus* (Asellota, Asellidae). *Amer. Midl. Nat.* 42(2): 334-349.

Tuttle, M.D., and D.E. Stevenson. 1977. Variation in the cave environment and its biological implications. IN: R. Zuber, J. Chester, S. Gilbert and D. Rhoades, eds. *National Cave Management Symposium Proceedings*. Albuquerque, NM: Adobe Press, pp. 108-121.

Williams, W.D. 1972. Freshwater isopods (Asellidae) of North America. *Biota of Freshwater Ecosystems Ident. Manual No. 7*. U.S. Environmental Protection Agency, 45 pp.

Author

The primary author of this proposed rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401, telephone (301) 269-5448.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Lee County cave isopod	<i>Lirceus usdagalun</i>	U.S.A. (VA)	NA	E	*	NA	NA

(Proposal: Lee County Cave Isopod—Endangered)

Dated: October 10, 1991.

Bruce Blanchard,
Acting Director, Fish and Wildlife Service.
[FR Doc. 91-27496 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

50 CFR Part 681

Western Pacific Crustacean Fisheries

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 7 to its Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 7 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before December 30, 1991.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and

environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813 (808-541-1974).

FOR FURTHER INFORMATION CONTACT: Svein Fougnier, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213-514-6660) or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808-955-8831).

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 7 proposes to establish new controls on fishing for spiny and slipper lobster in the Northwestern Hawaiian Islands (NWHI). These measures include a limited access program, with a maximum of 15 active permits and a maximum of 1,100 lobster traps allowed on board each permitted vessel. There also would be an annual fleet harvest quota, a 6-month closed

season each year, and reporting requirements to ensure adequate data to monitor the fishery and enforce the quota. The amendment provides authority for the Regional Director to make adjustment in some measures through rulemaking with the concurrence of the Council. These measures are intended to establish a more stable and economically healthy fishery while ensuring that stocks of spiny and slipper lobster will not be overfished. The amendment follows up on the emergency closure of the fishery implemented May 8, 1991 (56 FR 21961, May 13, 1991), which was subsequently extended for a second 90-day period (56 FR 36012, July 30, 1991), as stocks of lobster were determined to be at risk of overfishing.

An environmental assessment is incorporated into the plan amendment document. A regulatory impact review/initial regulatory flexibility analysis also is incorporated into the amendment document. All are available for public review (see "ADDRESSES").

Proposed regulations to implement Amendment 7 are scheduled to be filed with the Office of the Federal Register within 15 days.

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

Dated: November 8, 1991.

Joe P. Clem,

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

[FR Doc. 91-27432 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 56, No. 221

Friday, November 15, 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

Animal and Plant Health Inspection Service

[Docket No. 91-159]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: With this document, we give notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Bergan Park Room of the Sheraton Denver West Hotel and Conference Center, Lakewood, Colorado 80228, December 3 through December 5, 1991. Sessions will be held from 1 p.m. to 5 p.m. on December 3, from 8 a.m. to 5 p.m. on December 4, and from 8 a.m. to 12 noon on December 5.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Director, Operational Support Staff, ADC, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Tentative topics for discussion at the upcoming meeting will include, among other things, the expectations of the Committee for 1992, distribution of Federal ADC funds to the States, review of ADC's "futuring" efforts, research prioritization and adequacy of ADC

research, and the 1080 Livestock Protection Collar. The Committee will also develop recommendations and prepare comments on the results of the topics presented at the meeting.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. William Clay at the address listed under "For Further Information Contact," or may be filed at the meeting. Please refer to Docket Number 91-159 when submitting your statements.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 12th day of November, 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-27518 Filed 11-14-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 70-91]

Foreign-Trade Zone 162—New Haven, CT; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater New Haven Chamber of Commerce, grantee of FTZ 162, requesting authority to relocate and expand its zone in New Haven, Connecticut. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 31, 1991.

FTZ 162 was approved on October 2, 1989 (Board Order 442, 54 FR 42823, 10/18/89). It currently consists of a site (5.6 acres) at the Mossberg & Sons, Inc., plant in the Town of North Haven and a temporary site (4.6 acres, Port Buildings 9 & 10) within the Port of New Haven located at 140 Waterfront Street, New Haven, approved as a boundary modification for a period ending October 31, 1993 (A-25-91).

The grantee is now requesting authority to relocate the entire zone project from the Mossberg site to the Port of New Haven. The Port site would involve two parcels (36.6 acres): The 4.6 acre parcel on Waterfront Street mentioned above; and, a 32-acre parcel (including Port Buildings 101-105) within the Port's North Yard at Wheeler and Goodwin Streets, New Haven. The zone would be operated by New Haven Terminal, Inc., as part of overall port activity.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Victor G. Weeren, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, suite 801, Boston, Massachusetts 02222-1056; and, Colonel Philip R. Harris, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, Massachusetts 02254-9149.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 28, 1991.

A copy of the application is available for inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Northeast Region, Federal Building, 150 Court Street, New Haven, Connecticut 06511.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: November 6, 1991.

Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 91-27534 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review**AGENCY:** International Trade Administration/Import Administration; Department of Commerce.**ACTION:** Notice of final results of antidumping duty administrative review.

SUMMARY: On May 17, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy (56 FR 22843). The review covers one manufacturer/exporter of the subject merchandise to the United States, Montefluos, S.p.A., and the review period August 1, 1989 through July 31, 1990. We have now completed that review and determine the weighted average dumping margin to be 23.57 percent *ad valorem*.

EFFECTIVE DATE: November 15, 1991.**FOR FURTHER INFORMATION CONTACT:** Laurie Goldman or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.**SUPPLEMENTARY INFORMATION:****Background**

On May 17, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 22843) the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy (53 FR 33163; August 30, 1988). We have now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of granular polytetrafluoroethylene resin, filled and unfilled. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise to the United States, Montefluos, S.p.A., and the period August 1, 1989 through July 31, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from counsel for the respondent, Montefluos, S.p.A.

Comment 1: Montefluos contends that the Department should correct the following clerical errors in the computer program: The omission of model matching information for a particular type of PTFE; the failure of the computer program to use the correct home market sales date for certain comparisons; the failure to include a particular group of U.S. sales in the final margin analysis; the failure to appropriately convert the difference in merchandise adjustments; and the need to correct inadvertent differences in merchandise adjustments when comparing identical merchandise.

Department's Position: We agree with all of the comments submitted by respondent and have made appropriate corrections to the computer program.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Montefluos, S.p.A	8/1/89-7/31/90	23.57

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin will be required for Montefluos S.p.A. For all other manufacturers/exporters of this merchandise not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 23.57 percent shall be required. These deposit requirements are effective for all shipments of Italian granular polytetrafluoroethylene resin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 7, 1991.

Marjorie A. Chorlins,*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-27535 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Negative Final Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters From Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.)**AGENCY:** International Trade Administration, Import Administration, Commerce.**EFFECTIVE DATE:** November 15, 1991.**FOR FURTHER INFORMATION CONTACT:** Stephanie Hager or Michael Pass, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5055 or (202) 377-0629, respectively.**FINAL DETERMINATION:****Background**

On April 12, 1991, we initiated an anticircumvention inquiry pursuant to section 781 of the Tariff Act of 1930, as amended ("the Act"), to determine if Brother Industries, Ltd., and Brother Industries (USA), Inc., (collectively "Brother") are circumventing the antidumping duty order on portable electric typewriters ("PETs") from Japan (56 FR 14922). We published the negative preliminary determination in this inquiry on September 13, 1991 (56 FR 46954) ("PETs Negative Preliminary Circumvention Determination"). Since that time, the following events have occurred.

On September 26, 1991, we postponed the final determination until November 8, 1991 (56 FR 48778).

On October 4, 1991, we received case briefs, and on October 11, 1991, rebuttal briefs, from Brother and Smith Corona Corporation ("Smith Corona"), the petitioner in this proceeding. We held a public hearing on October 18, 1991. Post-hearing briefs were submitted on October 23, 24, and 28, 1991.

Scope of the Order

The products covered by the antidumping order on PETs are portable electric typewriters from Japan which include typewriters with calculators and certain later-developed portable electronic typewriters, including those with text display and expanded

memory, of the same class or kind as PETs within the scope of the order. This later-developed merchandise is of the same class or kind as a PET if it meets all of the following seven physical criteria: (1) Is easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) is electric, regardless of source of power; (3) is comprised of a single, integrated unit; (4) has a keyboard embedded in the chassis or frame of the machine; (5) has a built-in printer; (6) has a platen (roller) to accommodate paper; and (7) only accommodates its own dedicated or captive software. (See Final Scope Ruling: Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990).)

PETs from Japan are currently classifiable under Harmonized Tariff Schedule ("HTS") subheadings 8469.21.00 and 8469.29.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Period of Inquiry

The period of inquiry ("POI") is October 1, 1990 through March 31, 1991.

Standing

On April 1, 1991, at the public hearing, and in subsequent briefs, Brother alleged that Smith Corona lacks standing to file the anti-circumvention petition because: (1) It is no longer a U.S. manufacturer of the merchandise subject to the scope of the original antidumping duty order; (2) it is predominantly an importer of certain later-developed merchandise subsequently included within the scope of the original order (*i.e.*, portable automatic typewriters or automatic PETs ("PATs")); and (3) it is a U.S. assembler of certain products within the scope of the order (*i.e.*, PATs and liquid crystal display portable word processors), a substantial portion of the parts of which are imported, mainly from Japan. We performed a qualitative analysis of Smith Corona's U.S. production activities in light of the six factors considered by the Department for purposes of its interested party standing determinations (*i.e.*, extent and source of capital investment, technical expertise, U.S. value-added, employment levels, types of parts sourced in the United States, and other costs and activities), in the PETs Negative Preliminary Circumvention Determination and preliminarily determined that Smith Corona had standing.

On April 15, 1991, and in subsequent briefs, Smith Corona responded to

Brother's allegation, stating that it is both a U.S. producer of the like product and a seller of that product, other than at retail, with standing as an interested party under 19 CFR 353.29(b) and 353.2(k) to request that anti-circumvention inquiry.

Following the issuance of the preliminary determination, the Department requested and received detailed cost information from Smith Corona regarding the PETs it produces in the United States. We conducted a quantitative analysis of Smith Corona's U.S. operations based on this data. See November 8, 1991 memorandum entitled "Addendum to Recommendation on Petitioner's Standing," on file in the Department of Commerce Central Records Unit, room B-099. Based on this quantitative analysis of Smith Corona's operations, in conjunction with the aforementioned qualitative analysis, we find that Smith Corona's activities in the United States are sufficient to qualify it as an interested party as defined by section 771(9)(C) of the Act (see also 19 CFR 353.29(c)) with standing to file the anti-circumvention petition in this case. See Comment 6.

Final Calculation of Difference in Value

We calculated the difference in value between (a) the PETs completed and sold in the United States and (b) the parts and components used in the production of that merchandise which were imported from Japan. We determined that the differences in value ranged from 69 to 80 percent. (Because the actual figures are business proprietary, each of the stated percentages is approximated within a range of plus or minus ten percent.)

Value of Completed Merchandise

We used the weighted-average POI net selling price of selected models of completed PETs produced by Brother in the United States to represent the value of PETs. We deducted U.S. inland freight to derive the net selling price of the completed PET.

Value of Japanese Components

For those parts and components sourced from related suppliers in Japan, we used the greater of the weighted-average POI transfer price or weighted-average POI cost of production to represent the value of Japanese components. For the parts and components which were valued at cost of production, we revised factory overhead expenses to reflect findings at verification. Also, we allowed an offset against interest expense of short-term interest income from operations up to the amount of total interest expense

incurred. For those parts and components procured from unrelated suppliers in Japan, we used the weighted-average POI acquisition price to represent the value of Japanese components.

We included in our calculation of Japanese value all movement expenses that the respondent incurred on Japanese parts purchases, even if not included in the selling price of the Japanese parts. We also allocated a portion of SG&A and profit of the U.S. facilities to the value of the Japanese parts based on the ratio of the value of Japanese parts to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly. Based on certain expense reclassifications resulting from findings at verification, we revised the SG&A expenses reported by Brother International Corporation (BIC), Brother's U.S. sales subsidiary, which were included in the calculation of U.S. SG&A expenses.

Value of Third Country Components

For those parts and components procured from related suppliers in third countries, we used the greater of the weighted-average POI transfer price or the weighted-average POI cost of production to represent the value of third country components. For those parts and components procured from unrelated suppliers in third countries, we used the weighted-average POI acquisition price to represent the value of third country components.

We included in our calculation of third country value all movement expenses that the respondent incurred on third country parts purchases, even if not included in the selling price of the third country parts. We also allocated a portion of SG&A expenses and profit of the U.S. facilities to the value of the third country parts based on the ratio of the value of third country parts to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly. Based on certain expenses reclassifications resulting from findings at verification, we revised the SG&A expenses reported by BIC, which were included in the calculation of U.S. SG&A expenses.

Value of U.S. Components and U.S. Assembly

We used the weighted-average POI price from Brother's unrelated U.S. suppliers to represent the value of U.S. parts. We included in our calculation of U.S. value all movement expenses that the respondent incurred on U.S. part purchases, even if not included in the selling price of U.S. components. U.S.

assembly expenses included fabrication and overhead expenses incurred in U.S. operations, as well as SG&A and profit. We allocated SG&A expenses and profit of the U.S. facilities to the value of the U.S. components based on the ratio of the value of U.S. assembly and U.S. components to the sum of the value of Japanese parts, third country parts, U.S. parts, and U.S. assembly.

Based on certain expense reclassifications resulting from findings at verification, we revised the SG&A expenses reported by BIC, which were included in the calculation of U.S. SG&A expenses.

Interested Party Comments

Comment 1: Smith Corona argues that, in this case, whether the difference between the imported parts and the total value of the PET is small should be considered in light of the three factors specified in section 781(a)(2) of the Act (*i.e.*, pattern of trade, an increase in parts imports, the relationship of the parties). Smith Corona contends that where, as here, all three factors indicate circumvention, they must necessarily affect the determination of small. Smith Corona states that this interpretation of the Act comports with the remedial purpose of the law, and Congress' historical efforts to close loopholes in the enforcement of the law. Smith Corona argues that Brother's review of the legislative history omits entirely this congressional intent.

According to Smith Corona, "small" is not defined in the antidumping or countervailing duty statute and, therefore, the Department must consult the legislative history because the "plain language" of the statute does not suffice. See e.g., *Muse vs. United States*, 434 F.2d 349, 352 (4th Cir. 1970). Citing legislative history, Smith Corona argues that Congress intended the statutory language to avoid establishing a numerical threshold and to preserve the Department's discretion to deal with particular cases. See e.g., S. Rep. 71, 99th Cong., 1st Sess. 100 (1987). Flexible application of the anticircumvention statute is necessary in view of the statute's underlying remedial purpose, according to Smith Corona.

Citing provisions in the law relating to minor alterations and later-developed merchandise, Smith Corona argues that the Department has the inherent authority to prevent evasion of its antidumping duty orders when the form, but not the substance, of the importations change. According to Smith Corona, this argument is supported by the United States position in the GATT panel proceedings. *Re Screw Driver Assembly, Japan v. Economic*

Community, Case, L/6657, 2 Common Mkt. L. Rep. 639 (March 22, 1990), reprinted in, GATT, Basic Instruments and Selected Documents Supp. No. 37 at 132, 186-187.

Smith Corona also argues that, even without express direction from Congress, the authority of the Department to administer the antidumping law carries with it the implicit duty to prevent circumvention. See *Cemco v. Walling*, 324 U.S. 244, 248-259 (1944). See also *Color Television Receivers from Korea; Intention to Review Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination to Revoke Antidumping Duty Order*, (52 FR 6841, March 5, 1987).

In addition, Smith Corona contends that, while the statute requires the Department to consider all three factors listed in section 781(a)(2) of the Act, this list is not exhaustive. Therefore, according to Smith Corona, in order to effectively carry out the intent of Congress, the Department should examine this case in light of the commercial realities, *i.e.*, a pattern of trade reflecting unmistakable intent to avoid an antidumping duty order, through minimal U.S. investment in capital and labor, and only minor changes in the component parts.

According to Smith Corona, Brother's pattern of trade consists of the continued use of many identical parts, whether from Japan or third country suppliers, assembled in the United States in a low-skill operation adding only small value to the finished product. In addition, Smith Corona alleges that Brother transferred assembly of later-developed merchandise to the United States in successive steps following each scope determination that found a particular PET within the parameters of the order.

Furthermore, with respect to pattern of trade, Smith Corona contends that it is not relevant whether Brother first imports components into Japan and then re-exports those parts to its U.S. plant in Bartlett, Tennessee, or instructs its parts suppliers to ship directly to Bartlett.

According to Smith Corona, where the facts unequivocally establish circumvention of an order by related parties which cease imports of finished products and instead shift to parts imports, and where the elements of sections 781(a)(1) (A) and (B) of the Act indicate circumvention, the interpretation of "small" for purposes of section 781(a)(1)(C) must be made so as to effectuate the legislative intent. See *NTN Bearing Corp. v. United States*, 747 F.Supp. 726, 731 (CIT 1990) ("Bearings").

Brother argues that the Supreme Court has specifically directed that resort may not be made to extrinsic evidence where the questioned language is "clear and construction according to its term does not lead to absurd or impractical consequences." *United States v. Missouri Pacific Railroad*, 278 U.S. 269, 277 (1929). The courts have also stated that it is not necessary to inquire further when the statute is unambiguous; therefore, examination of the legislative history is unnecessary. Furthermore, Brother argues that foreign manufacturers and investors have a right to rely upon the statutory language as written. *National Corn Growers Association v. Baker*, 840 F.2d 1547, 1555 (Fed. Cir. 1988) ("[t]he law is the law at the time of its existence, whether right or not, and 'practical men' have a right to rely on it at the time they perpetrate their actions"). According to Brother, if the plain language of the statute is thrown out and Smith Corona's approach is adopted, no one will know what the anticircumvention statute means.

Brother claims that the factors cited in section 781(a)(2) of the Act are not threshold issues. Therefore, Brother implies that they should not influence the outcome of the "small" test. See *Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore; Negative Final Determination of Circumvention of Antidumping Duty Orders*, (56 FR 9667, March 1991) ("Color Picture Tubes")

DOC Position: Section 781(a) of the Act directs that the Department first determine, *inter alia*, whether the difference between the value of the merchandise sold in the United States and the parts imported from a country subject to the antidumping duty order is small. If the Department determines that the difference is small, that is, the conditions set forth in section 781(a)(1) of the Act are met, then the Department may include within the scope of the order parts or components imported from the country subject to the order. In deciding whether it is appropriate to include parts, the Department is directed to consider the factors in section 781(a)(2) of the Act.

A plain reading of the statute, therefore, indicates that the Department must first determine whether the difference between the value of the parts from Japan and value of the PETs completed at Brother's U.S. facility is small. Only if it determines that the criteria in section 781(a)(1) of the Act are met should it take into account the three factors listed in section 781(a)(2) in determining whether to cover parts in

the order. That is, when the difference in value is small, the Department has the discretionary authority to apply the order to the imported parts or components by considering the pattern of trade, the relationship of the parties, and any increase in imports.

This plain reading of the statute is supported by its legislative history. The House bill's anticircumvention provision provided that

The order which covers the completed article from a particular country or countries shall apply to the imported parts or components, provided that:

- (a) Substantially all of the parts or components are imported from the country subject to the finding;
- (b) The value added in the U.S. is small; and,
- (c) The parts or components were produced by a company related to the company performing the U.S. operations.

H.R. Rep. No. 576, 100th Cong., 2d Sess. 599, reprinted in 1988 U.S. Code Cong. & Admin. News 1632 (emphasis added). The Senate amendment, to which the House receded, however, dropped provisos (a) and (c), and the "shall apply" language of the House version. Instead, the Senate left the definition of small to the discretion of the Department. In addition, the version, as adopted, provides that the Department has discretion to determine whether parts should be included within the order, once the "small test" has been conducted. In exercising its discretion to decide whether the order should be applied to parts, the Department is to examine the factors in section 781(a)(2) of the Act.

Furthermore, in *Color Picture Tubes*, the Department held that the three factors in section 781(a)(2) are not threshold conditions. It follows that, as the three factors are not threshold conditions, there is no basis for examining those factors prior to determining whether the difference in value between imported Japanese parts and the value of the completed PET is small.

Comment 2: Smith Corona maintains that the relative value of the imports from Japan as opposed to other countries is not dispositive of a finding of circumvention. In determining whether the difference in value of Japanese components and the finished product is small, the Department has the inherent authority to prevent evasion of a remedial statute, even though the statute did not contemplate the situation revealed by this inquiry. There, according to Smith Corona, third country parts should be considered in determining whether the difference in

value of Japanese components and the finished product is "small."

Smith Corona cites the legislative history of the circumvention provision, stating Congress intended to close the "loopholes" through which circumvention of an order was possible. Additionally, Smith Corona notes that the Department has interpreted the Act in such a way as to attempt to give effect to legislative intent. See Smith Corona's argument in Comment 1. Smith Corona also cites a recent decision in *Bearings* in support of its argument that because foreign manufacturers can circumvent an order by employing creative import strategies, the circumvention provision should be interpreted as Smith Corona advocates. It also contends that the Department has, in the past, construed the Act broadly, and should do so here to prevent circumvention of an order.

Brother contends that no legal basis exists for including third-country parts in the Japan value. To do so would be in direct conflict with the statutory language of section 781(a)(1)(B) of the Act, which states that the Department must compare the value of the merchandise assembled and sold in the United States with the value of "parts or components produced in the country with respect to which" the antidumping duty order applies. As Brother stated with regard to the issue raised in Comment 1, the Supreme Court has specifically directed that resort may not be made to extrinsic evidence where the questioned language is "clear and construction according to its term does not lead to absurd or impractical consequences." *United States v. Missouri Pacific Railroad*, 278 U.S. 269, 277 (1929). Brother also cites Certain Internal-Combustion Forklift Trucks from Japan; Negative Final Determination of Circumvention of Antidumping Duty Order, (55 FR 6028, 6029, February 21, 1990) ("Forklift Trucks"), where the Department refused to include the value of third country parts, stating that he anticircumvention provision is not a local content law.

DOC Position: We find no basis to include third country parts in the Japan value in a section 781(a)(1) proceeding. We do not agree with Smith Corona that the legislative history supports the proposition that third country parts should be included in the value of components imported from the country subject to the order when determining whether the difference in value between the end product and the value of these components is small. See Discussion of House Report 100-576 in Comment 1. In fact, the plain language of the statute indicates that the value of merchandise

sold in the United States shall be compared with "parts and components produced in the foreign country with respect to which the order or finding applies * * *." Section 781(a)(1)(B) of the Act (emphasis added). As Brother states in rebuttal to Smith Corona's argument, there is no reference to the inclusion of third country parts or components in determining whether the difference in values is small.

Smith Corona is correct in noting that the Department has, in the past, interpreted the intricacies of the Act in such a way as to attempt to give effect to legislative intent where the law is unclear and we were required to fill in its interstices. However, we find no evidence that Congress intended the circumvention provision to be interpreted as Smith Corona advocates, even if one disregards the plain language of the statute.

We agree with Smith Corona that the court, in ruling on the *Bearings* scope decision, stated that the anticircumvention provision provides the Department with the discretion necessary to enforce U.S. trade laws effectively; however, that decision does not support the proposition advocated by Smith Corona in this case. In *Bearings* the issue was whether component parts from the country under investigation could be included in the investigation. The case is inapposite to the present situation, where there has been no determination that third country parts are being dumped or are causing material injury to the domestic industry.

We do not believe that the Department would be acting within its authority by adding the value of third country components to Japanese components to determine whether the difference between that amount and the value of the finished PET is small. In fact, the Department stated in Forklift Trucks, that the "anticircumvention provision is not a local content law. Rather, the provision focuses on the difference in the value of components imported from the country covered by the order and the value of the completed product in the United States."

Comment 3: Smith Corona argues that the third country imports in this case were subject to the original antidumping duty order issued in 1980 by virtue of the fact that they were formerly incorporated into Brother's Japanese PETs. Smith Corona alleges that Brother merely assembled PETs in Japan and that the transplant of the assembly line to the United States should not operate to exclude those parts from the order.

Smith Corona contends that the assembly line in the Untied States is

similar, if not identical to the one existing in Japan prior to the antidumping duty order on PETs. As evidence, Smith Corona analyzes two of Brother's PETs, one made in Japan and the other made in the United States, and concludes that their parts content is almost identical. According to Smith Corona, the anticircumvention provision was enacted to end the situation whereby relocation of a low-value assembly process would exempt the finished goods from an existing antidumping duty order. As support for this argument, Smith Corona cites the legislative history of section 781(a) of the Act in which Congress rejected statutory language which would have required that "substantially all" parts or components be imported from the country "subject" to an antidumping duty order. See House Report 100-576. According to Smith Corona, by rejecting the "substantially all" language, and instead including parts from any country "to which the order * * * applies," *Id.* Congress manifestly intended that products incorporating parts from countries not strictly subject to the antidumping duty order might nevertheless be covered as a part of the finished product.

Brother counters that there is no evidence on the record to suggest that it simply transplanted its assembly line to the United States. The evidence presented by Smith Corona relies upon the analysis of two PET models that are currently produced in the United States and Japan. Nowhere does Smith Corona even attempt to show that Brother's facilities in Japan at the time of the original order (1980) were the same as the present facilities in the United States.

DOC Position: We agree with Smith Corona that the deletion of the "substantially all" provision has increased the latitude of the Department in examining the question of circumvention. We do not agree, however, that that deletion has any impact on the comparison of values in determining "small." Rather, it has simply removed the threshold requirement that substantially all of the parts or components be imported from the country subject to the finding.

In addition, in order to show that the PET assembly line was transplanted from Japan to the United States following the imposition of the antidumping duty order, we would need evidence as to the extent of operations in Japan prior to the order. The evidence on the record compares the operations currently in Japan and the United States and concludes that the two are similar,

if not identical. This evidence is not dispositive of, nor does it address, the extent of production in Japan prior to the order. The Department cannot assume that current operations in Japan are identical to those in place over 11 years ago, or even that Brother used any third country-sourced components at that time. (See DOC Response to Comment 1 for further discussion of the legislative history of the Act.)

Comment 4: Smith Corona argues that Brother's third country parts are designed in Japan and assembled from Japanese components using Japanese equipment for captive consumption by Brother's assembly lines in the United States. Therefore, Smith Corona argues the true country of origin of the so-called third country parts is Japan and they are, thus, produced in a country with respect to which the antidumping duty order applies within the meaning of section 781(a)(1)(A) of the Act. Smith Corona maintains that information on the record, including engineering reports, photographs, and physical samples, establish common design, tooling, and parts for Brother's third country components. Furthermore, Smith Corona states that verification disclosed no involvement by third parties in the production of engineering drawings and technical specifications.

According to Smith Corona, Brother established a subsidiary in Malaysia for the supply of parts to its subsidiaries in the United States and the United Kingdom. Smith Corona states that the International Trade Commission's ("ITC") investigation disclosed that the high-value-added design and engineering activities took place almost exclusively in Japan. Given the staffing and functional responsibilities of Brother's U.S. operations, and given that the design and engineering is almost exclusively Japanese, Smith Corona argues that Brother's corporate structure strongly implies that all design and engineering for parts assembled in Malaysia is done in Japan. Likewise, Smith Corona contends that other subassemblies supplied from third countries undoubtedly contain Japanese parts and materials and are based upon Brother's Japanese designs and engineering.

Smith Corona maintains that the importation of a collection of parts, which if assembled in Japan would be within the class or kind of merchandise, is constructively merchandise "to which such order * * * applies." Certain Personal Word Processors from Japan, Inv. No. 731-TA-483, (Final) USITC Pub. No. 2411 at 56 (August 1991). Smith Corona argues that, at a minimum, the

Department should determine the Japanese content of all imported subassemblies and parts in order to calculate more precisely the value called for by section 781(a)(1)(C) of the Act.

According to Smith Corona, the Department need not speculate, as suggested by Brother, to find record evidence that Brother's third country imports are implicated in a pattern of trade amounting to circumvention of the antidumping duty order. For example, the exhibits to Smith Corona's anticircumvention petition established that Brother's U.S.-assembled and Japan-assembled typewriters used the same major parts. Furthermore, Smith Corona disassembled two Brother typewriters, one made in Japan, the other in the United States, and concluded that the various parts, subassemblies, and major components (1) are identical, (2) have identical markings, or (3) are assembled in an identical configuration using similar components. Smith Corona states that, while it has provided the best information reasonably available to it on this issue, Brother did not provide any evidence in rebuttal. In support of this argument, Smith Corona cites *Freeport Minerals Co., v. United States*, 776 F.2d 1029, 1033 (Fed. Cir. 1985) ("the administering authority must take into consideration the best information available to it"). Likewise, according to Smith Corona, the Department, in combatting circumvention of its orders, should not place an insurmountable burden on Smith Corona. At least, Smith Corona argues, the Department should "collect pertinent data" and consider every "relevant aspect" of the questions presented. *Timken Co. v. United States*, 10 CIT 86, 97, 630 F.Supp. 1328, 1337-38 (1986).

Brother contends that there is no factual basis for including third-country parts in the Japan value. The petitioner has not demonstrated that third-country parts are, in reality, Japanese parts. The Department has consistently considered the country of origin of merchandise as the country of export, except where merchandise is transshipped through a third-country and does not enter the commerce of that country. Brother asserts that Smith Corona is attempting to nullify the country of origin by simply alleging that the real country of origin for Brother's globally sourced parts is Japan. The petitioner's attempts to distinguish these parts by stating that they are procured from related suppliers simply defies the law and current practice. The Department has never adopted the position that parts procured from related suppliers in third countries

are in fact products of the home market. *Televisions from Japan* (televisions exported from Japanese manufacturer's factories in Taiwan and Singapore excluded from investigation so long as they are not transshipments or assembly of kits).

Smith Corona's suggestion that Brother is simply transshipping parts to the United States via Malaysia is not supported by any evidence on the record. While exports of Japanese parts and accessories of typewriters to Malaysia rose from approximately \$143,000 in 1988 and 1989 to approximately \$286,000 in January-June 1991, the statistics indicate neither who exported the merchandise nor what happened to the merchandise once in Malaysia. Brother again asserts that any part exported from Japan to Malaysia for incorporation into a further manufactured product becomes a product of Malaysia.

Brother adds that the petitioner's contention that its parent in Japan has provided the R&D, tools, molds, and other assets for manufacturing the third-country parts is, at best, speculation, and, nonetheless, inconclusive. Assuming, *arguendo*, that Brother has provided such assistance, investment in a third country operation does not convert that operation into a producer of merchandise subject to the antidumping duty order covering such merchandise from the country in which the investor is domiciled.

Brother argues that Smith Corona's assertion that subassemblies procured from unrelated third country suppliers contain Japanese parts that should be included in Japan value is baseless. First, Smith Corona's analysis of Brother's model W-4U typewriter is not relevant because (1) the machine was manufactured in Japan, and (2) the WP-4U was manufactured one year prior to the current POI. Furthermore, to assume that Japanese components of a third country-produced subassembled procured from an unrelated supplier should be reflected in Brother's Japan value would force the Department to (1) rely on estimates of these costs, as the actual costs would be nearly impossible to obtain from an unrelated entity, and (2) utilize the costs of the unrelated supplier as a part of Brother's cost.

DOC Position: Smith Corona argues that third country parts are a product of Japanese engineering and include Japanese produced sub-components. We find no legal basis for including third country parts in our calculation of the difference between the value of Japanese parts and components and the end-product (see *DOC Position to Comment 3 and 4*).

Even assuming that such a legal basis exists, Smith Corona has not provided sufficient evidence that indicates that Brother provided manufacturing assistance other than direct Japanese investment in a related subsidiary. Direct Japanese investment alone is not a sufficient basis to treat parts manufactured in a third country as Japanese parts.

There is no evidence that PET parts exported by Brother from its related subsidiary in Malaysia are in fact products from Japan, *i.e.*, that they are merely transshipped. The Department addressed the issue of transshipment in the verification report, noting "respondent took a conservative approach in classifying the subject parts by country of origin" (*i.e.*, "certain parts [Brother] procured from a U.S. vendor which [Brother] knew were procured by a Japanese or third country manufacturer, were classified as Japanese or third country parts, respectively, not as U.S. parts") and "[n]o discrepancies were noted." Memorandum from Linda K. Eads and V. Irene Darzenta to Gary Taverner and Marie Parker, September 5, 1991, at 4. Thus, there is no evidence to suggest that Brother transships Japanese parts through Malaysia.

In addition, while circumvention of an order can occur when unrelated parties in the United States and the country subject to the order are involved in the importation and assembly of parts, parts and components which are imported from unrelated suppliers in third countries, and which are of third country origin cannot be viewed as being part of the Japan value of the finished product. As these parts are further manufactured in third countries, they cannot be viewed as produced in a country with respect to which the antidumping duty order applies" (see also, *DOC Position to comment 2 and 3*).

Comment 5: According to Smith Corona, the 100 production steps performed by Brother at Bartlett are a fraction of the 6,000 manufacturing steps required to produce a PET. Smith Corona argues that the three operations performed at Bartlett (welding imported chassis parts, subassembly of imported PC boards, and final assembly) do not constitute a full-scale manufacturing plant. In addition, Smith Corona states that Brother does not engage in fabrication in its Bartlett plant and that the technology employed is unsophisticated, depending upon manual assembly. According to Smith Corona, Brother's U.S. facility's employment and investment levels are not on par with an integrated manufacturing facility. Furthermore,

essential engineering, design, and development takes place in Japan. According to Smith Corona, the evidence on the record establishes that Brother is engaging in the minimum amount of PET production possible in the United States.

Brother states that the petitioner's analysis of other factors, including the number of production steps, amount of investment, and the wages and skills of U.S. workers is an attempt to introduce subjective terms not found in the statute's discussion of circumvention. The number of production steps at Brother's facility in the United States is not dispositive of the extent of production. In fact, it is more indicative of the level of vertical integration of the operation. While Smith Corona asserts that Brother does not approach the 6,000 production steps it states are necessary to produce a PET, Brother contends it does perform a significant number of steps. Brother states that Smith Corona, a producer of its own screws, plastic housings, etc., has more production steps, but that fact alone does not make Brother any less a producer. Brother's external sourcing of certain parts is more cost-effective than on-site production. Smith Corona's assertion that Brother's technology is unsophisticated and depends upon manual assembly is baseless given the information obtained by the Department. As support for the assertion that its U.S. operations are not unsophisticated, Brother cites Certain Personal World Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. No. 2411 (August 1991), in which the ITC's majority opinion stated "BI(USA) not only produces the finished product, but assembles an important component, printed circuit boards."

Brother maintains that Smith Corona's comparisons between its U.S. operations and those of Brother are not of any weight under the law. In fact, there is no benchmark against which Brother's operations legally can be compared.

DOC Position: We agree with Brother that the determination of whether circumvention is taking place should not be based on a comparative analysis of Smith Corona's operations and those of Brother. In *Forklift Trucks*, the Department rejected the petitioner's comparison of its operations to those of the respondents noting "[s]uch comparisons are inappropriate because they do not account for a variety of factors that affect investment levels, such as volume of production and types of products manufactured [it is not necessary that respondents' investments be comparable with those of [petitioner]

in order for the Department to decide if respondents' facilities are more than mere completion or assembly operations]." *Id.* For purposes of determining whether circumvention is taking place, the Department analyzed the factors enumerated in section 781(a) of the Act which do not, and properly cannot, include a comparative analysis of various companies involved in the manufacture of the product at issue.

While we recognize that Smith Corona may be a more vertically integrated operation than Brother, lack of vertical integration does not demonstrate that circumvention is taking place. Additionally, Smith Corona and Brother may have different definitions of what constitutes a "production step." As the Department noted in the *PETs Negative Preliminary Circumvention Determination*, "we viewed over 100 production steps" at Brother's facility in Tennessee. These 100 production steps may or may not be equivalent to the production steps described by Smith Corona because neither party defined what constitutes a "production step."

Comment 6: Brother states that Smith Corona does not have standing to file the petition in the instant inquiry because it is not an interested party pursuant to 19 CFR 353.29(b) and 353.2(k). Brother asserts that each of the six ITC criteria applied to it (extent and source of capital investment, technical expertise, U.S. value-added, employment levels, types of parts sourced in the United States, and other costs and activities), as petitioner in the PETs from Singapore investigation, should be applied to Smith Corona in the instant inquiry.

Brother contends that because Smith Corona shifted all production of PETs to Singapore in 1989, it has no capital investment, value added, employment, capital investment, U.S. sourced parts, or any other costs and activities in the United States directly leading to the production of PETs. Any costs related to R&D, design, or engineering would not exceed a negligible percentage of the U.S. market value of such imported PETs, as PETs are a mature product and have not been subject to significant technological advancements in the past ten years. Accordingly, with respect to PETs, Smith Corona is not a domestic producer or wholesaler of domestically produced PETs, as required by 19 CFR 353.2(k).

Brother maintains that Smith Corona is the largest U.S. importer of PATs and that more than 50 percent of the PATs marketed by Smith Corona are assembled in its Singapore facilities or elsewhere offshore. Additionally, the

two models produced in the United States are "high-end" models which benefit from the strong market presence of low priced Smith Corona imports. Brother argues that Smith Corona's domestic assembly operations should be disregarded in determining the scope of the domestic industry producing the like product in accordance with section 771(a)(4)(B) of the Act which states:

When some producers are related to the exporters or importers or are themselves imports of the allegedly * * * dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

While the provision authorizes the ITC to disregard certain producers, the Department may, in the independent exercise of its discretion, properly apply this provision.

Brother asserts that Smith Corona has a "master plan" to phase out U.S. operations and that, in addition to the facts stated above, the following proves that it is not an interested party within the meaning of 19 CFR 353.2(k): (1) PATs assembled in Smith Corona's U.S. facility represent less than 20 percent of Smith Corona's sales of the like product; (2) Smith Corona plans to phase out domestic production completely and transform its U.S. operation into a sales and marketing organization; and (3) Smith Corona is systematically reducing its U.S. workforce as it increases its workforce in Singapore. Brother cites The Worker Adjustment and Retraining Notification Act as the sole reason Smith Corona's move to Singapore has been retarded.

Assuming, *arguendo*, that the preceding does not provide a basis for disregarding PAT assembly in the United States, Brother asserts that the Department may still disregard that production based on an analysis of the six ITC criteria.

Brother contends that Smith Corona's capital investment in the United States is dedicated primarily to the production of personal word processors ("PWP"). Based on the extent to which the U.S. facilities are used to produce PATs, a similar proportion of investment may be allocated to this production. The resulting investment figure is negligible. Brother again asserts that the majority of capital investment is based in Singapore.

Brother argues that Smith Corona's assembly of PATs in the United States can best be characterized as final assembly operations using low skilled workers. Fabrication such as the machining of small nuts, screws, other fasteners, and injection molded plastic

parts requires operators with no special skills.

With respect to two PAT models assembled in the United States, Brother states that the U.S. value-added components, as a percentage of the total components, is small. As discussed in the Pacific Rim Report, a report commissioned by Brother analyzing the parts content of Smith Corona PATs, the identified U.S. value added in the two models was determined to be, on average, less than 10 percent. An analysis of the higher technology inputs indicates that they were produced outside the United States. Only the plastic cabinet, a non-operational and non-critical component, was identified as produced in the United States.

Brother contends that while a precise number of employees engaged in the assembly of PATs in the United States is not available, the number is believed to be small. Additionally, the workers may be engaged in production of other merchandise, such as PWPs.

As discussed previously, Brother contends that the quantity and types of domestically sourced parts is small, with the plastic housing being the only part clearly identified as having been produced in the United States.

Brother maintains that any R&D, design and engineering cost incurred in the United States should be allocated proportionally to those products produced in Singapore and the United States.

Brother adds that, while Smith Corona was found to have standing to file a petition in Certain Personal Word Processors from Japan, such a determination does not give Smith Corona standing with respect to PETs and PATs, a separate like product. See e.g., High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determinations; Rescission of Investigation and Partial Dismissal of Petition, (56 FR 32376, July 16, 1991).

Lastly, Brother maintains that Smith Corona is not a manufacturer, producer, or wholesaler of PWPs in the United States. Brother's analysis of the origin of parts of three PWPs indicates that the value of U.S. components ranges from 4.1 percent to 13.11 percent of the total value of the components. As was the case with PATs, the identified U.S. value added component consists of the plastic housing. Regarding R&D, Brother asserts that PWPs are a mature technology, therefore, any R&D incurred in their manufacture is small.

Smith Corona asserts that Brother's renewed challenge to Smith Corona's standing as an interested party should

be denied. Smith Corona states that Brother offers no new evidence or other basis to overturn the Department's determination that Smith Corona has standing as a domestic producer and a manufacturer. According to Smith Corona, Brother has ignored data on the record which establish that Smith Corona's U.S. value-added is over 75 percent of the total cost of production for the PETs which it manufactures in the United States. Furthermore, Smith Corona alleges that Brother has failed to mention Smith Corona's U.S. production of PWP which are covered by the scope of the order (See Final Scope Ruling: Portable Electric Typewriters from Japan (55 FR 47368, 47370, November 13, 1990) ("PETs Scope Ruling")) and the fact that the Department concluded in Personal Word Processors that Smith Corona was a domestic producer and manufacturer of such PWP.

With respect to capital investment, Smith Corona contends that Brother ignores the total dollar amount of Smith Corona's investment in the United States and, instead, argues that Smith Corona's investment in in-house production capability for items which can be produced from domestic or off-shore suppliers is a marginal factor. Citing Recession of Initiating of Antidumping Duty Investigation and Dismissal of Petition: Certain Portable Electric Typewriters from Singapore (56 FR 49880, 49881, October 2, 1991) ("PETs from Singapore"), however, Smith Corona contends that the decision to manufacture and fabricate parts, as opposed to merely assembling purchased parts and components, is directly indicative of manufacturing or production required in order to establish standing.

According to Smith Corona, Brother's allegations regarding the technical expertise involved in the production of PETs in Smith Corona's U.S. facility in Cortland, New York, are flatly contradicted by the record. Smith Corona states that it engages in substantial production activities including R&D, product engineering, manufacturing engineering, quality control, material management, and tool and die manufacture, all of which require considerable technical expertise.

Smith Corona also asserts that Brother misrepresents the record with respect to Smith Corona's U.S. value-added. According to Smith Corona, data and a video tape submitted to the Department, as well as personal observations made by Department personnel during a factory tour of Smith Corona's facilities, clearly establish that over 75 percent by value of the total cost

of Smith Corona's PETs was added in the United States. Smith Corona states that the Pacific Rim Report is fundamentally flawed in assuming that various subassemblies, such as the carriage mechanism, were produced in Singapore and imported. According to Smith Corona, Department personnel witnessed manufacturing of the carriage assembly in Cortland. Smith Corona also argues that the 8.5 percent estimated U.S. value-added supplied by the Pacific Rim Report is based upon uninformed speculation, readily dismissed by simply viewing the plant tour video.

Smith Corona states that Brother does not address the level of employment at Cortland, but instead speculates that Smith Corona's employees "may be engaged" in the production of other products. Against the evidence of Smith Corona's plant tour video and the personal observations by Department officials during the Smith Corona plant tour, Smith Corona argues that Brother's allegation is not supported by substantial evidence.

With respect to the quantity and types of parts sourced, Smith Corona contends that Brother again ignores information on the record. According to Smith Corona, the Pacific Rim Report wrongly assumes that the carriage assembly, as well as any other unmarked part, is foreign in origin. Smith Corona states that Brother has not addressed evidence on the record which indicates that all of these parts are of U.S. origin. When the carriage assembly is reclassified and the other parts are properly labeled as U.S. origin, the total U.S. parts content identified by the Pacific Rim Report is greater than 50 percent for certain models of PETs.

According to Smith Corona, Brother incorrectly speculates that most R&D and design costs incurred in the production of PETs should be allocated to Singapore. Smith Corona asserts that more models, each of higher degrees of sophistication, are produced in Cortland and, therefore, Brother's rationale does not support its conclusion.

Furthermore, with respect to Brother's arguments concerning section 771(4)(B) of the Act, the related party provision of the Act, Smith Corona contends that it is not an importer of Japanese PETs or of any PET parts and components covered by this antidumping duty order (i.e., the "dumped merchandise" in this inquiry). Therefore, according to Smith Corona, section 771(4)(B) is inapplicable.

Finally, Brother's arguments concerning Smith Corona's status as a producer of the Like product are irrelevant, according to Smith Corona.

Smith Corona contends that the anticircumvention petition was not limited by the distinctions made by Brother between PETs and PWP. Brother's legal argument that U.S. manufacturers which do not produce models identical to every species of import do not have standing with respect to those models not produced, has repeatedly been rejected by the Department and the courts, according to Smith Corona. See e.g., Koyo Seiko Co., Ltd. versus United States, Slip Op. 91-52, at 10-11 (June 27, 1991), appeal pending, Fed. Cir. Appeal No. 91-1427.

Smith Corona maintains that prior to the preliminary circumvention determination, the Department analyzed an identical record using virtually the same criteria argued by Brother. Brother has provided no basis, however, for the Department to depart from its prior ruling that Smith Corona has standing to pursue the instant inquiry.

DOC Position: The standing challenge in this case involves the allegation that the petitioner is an assembler and not a manufacturer of the like product and, therefore, lacks interested party status pursuant to section 771(9)(C) of the Act, to bring the petition. The scope of the PETs order includes PETs, PATs, and certain PWP. PETs Scope Ruling. PETs, PATs, and certain PWP all constitute the same like product and one class or kind of merchandise. Information on the record indicates that Smith Corona does, in fact, produce PATs in the United States (see discussion below). Therefore, we have concluded that Smith Corona is a producer of the like product in the United States for standing purposes. Brother's argument concerning Smith Corona's lack of production of PETs in the United States is not dispositive because there is no requirement that a party produce every product within the like product designation—only that it be a producer of a like product.

We do not agree with Brother's argument that Smith Corona's domestically-produced PATs benefit from Smith Corona's imported PATs and, thus, may be disregarded under section 771(4)(B) of the Act. As asserted by Smith Corona, the allegedly dumped merchandise subject to this inquiry is PETs from Japan. Smith Corona does not import PETs from Japan and, therefore, the related party provision does not apply.

We also do not agree with Brother that any alleged "master plan" of Smith Corona (to shift all typewriter production from the United States to Singapore and elsewhere overseas) should operate to exclude Smith Corona

as a U.S. manufacturer. The information on the record indicates that Smith Corona did, in fact, produce PATs at the time it filed the petition in the instant inquiry. See e.g., July 3, 1991 memorandum to the file, entitled "Tour of Smith Corona Corporation in Cortland, NY." Brother's allegations about Smith Corona's future plans are both speculative and irrelevant.

We agree with Smith Corona that Brother has provided no new evidence which warrants a reversal of the Department's preliminary affirmative determination with respect to Smith Corona's standing in the instant inquiry. Our analysis of Smith Corona's PET operations in the United States in light of the six criteria we have adopted for purposes of determining whether an entity has domestic interested party status (*i.e.*, extent and source of capital investment, technical expertise, U.S. value-added, employment levels, types of parts sourced in the United States, and other activities), indicates that Smith Corona does engage in the manufacture of PETs in the United States. See also May 3 and November 8, 1991 memoranda entitled

"Recommendation on Petitioner's Interested Party Status."

Although the actual figures are business proprietary, the record indicates that Smith Corona's capital investment in the United States is substantial. Brother's assertions that Smith Corona's U.S. investment in PAT production is small compared to its PET/PAT investment in Singapore is irrelevant because, here, we are only concerned with a company's investment in the United States.

The record also supports the conclusion that significant technical expertise is involved in Smith Corona's production activity in the United States. For example, as indicated in Smith Corona's plant tour video, Smith Corona engages in fabrication involving the processing of material from its raw form into a component part. Although Brother argues that Smith Corona does not engage in operations critical to the production of a PET, Smith Corona does manufacture, through injection molding, plastic casings for its PETs. The ITC lists plastic casings (or housing/jacket) as one of "six major subassemblies for PETs." Portable Electric Typewriters from Singapore, Inv. No. 731-TA-515 (Preliminary), USITC Pub. 2388 at A-13 (June 1991). Smith Corona's manufacture of plastic casings, as well as fasteners for its PETs, is indicative of its commitment to manufacturing operations in the United States.

Information on the record also indicates that Smith Corona's U.S.

value-added is substantial. See November 8, 1991 memorandum entitled "Addendum to Recommendation on Petitioner's Interested Party Standing." The Pacific Rim Report, cited by Brother as evidence that Smith Corona's U.S. value-added is not substantial, estimates Smith Corona's U.S. value-added only on the basis of materials. U.S. value-added, however, involves not only materials cost, but labor, overhead, SG&A, R&D, and design. See e.g., PETs Negative Preliminary Circumvention Determination. Our calculations of Smith Corona's value-added, including all of these elements, indicates that Smith Corona's U.S. value-added is, in fact, very substantial.

Based on information on the record, we have found Smith Corona's U.S. employment levels to be substantial (the actual figures are business proprietary). A significant number of these employees are devoted to fabrication. Brother, which simply contends that Smith Corona's employment levels are "believed to be small," has offered no new evidence or argument which would compel us to reexamine or reverse our prior finding on this matter.

The quantity and types of parts sourced in the United States by Smith Corona is also significant. From the various parts separately manufactured, Smith Corona makes subassemblies, including the printed circuit board, which is almost entirely assembled from U.S.-made components, and the printer assembly.

Smith Corona conducts all R&D and design for its PETs in the United States. This fact, standing alone, is significant for purposes of Smith Corona's status as a U.S. manufacturer. In the antidumping duty investigation of PETs from Singapore, we stated that although R&D and design expenses for PETs are "no longer large quantitatively [due to the maturity of the product], they remain an important factor in determining [a party's] status as a domestic producer because design is an essential part of producing a manufactured product." PETs from Singapore. Therefore, we find that Smith Corona's other costs and activities in the United States leading to production of the like product are significant.

The information on the record indicates, consistent with our preliminary determination, that Smith Corona engages in sufficient production-related operations to be considered a manufacturer of the like product in the United States. Therefore, we find that Smith Corona has standing to file the petition in the instant inquiry in accordance with section 771(9)(C) of the Act. Because we have determined that

Smith Corona is a manufacturer of PETs/PATs, it is unnecessary for the Department to consider whether Smith Corona, as a producer of certain PWP, which are like products to the merchandise subject to this order, has standing as an interested party.

Comment 7: Brother argues that, for its final determination, the Department should not increase the value of Japanese parts shipped to the United States for previously unallocated Japanese factory overhead expenses. Brother claims that these factory overhead expenses were incurred only on finished goods and should not be allocated to parts. Moreover, Brother contends that to include the unallocated factory overhead in the parts cost would double-count a portion of these expenses. Assuming, arguendo, that the Department includes this factory overhead, Brother claims that it should not be added to the value of parts procured in Japan from unrelated sources.

Smith Corona argues that factory overhead costs must be fully absorbed by the products manufactured in the factory, both parts and finished goods. Smith Corona contends that it is likely that expenses included in Brother's factory overhead, such as on-site design support, quality assurance, and production control activities, relate to all of the products that are currently moving through the plant and not just in the finished goods. Smith Corona maintains that these costs relate as much to the component parts of a typewriter as they do to the finished typewriters. Additionally, Smith Corona contends that Brother provided no citation to the record, including documents submitted at verification, that any of these expenses had been double-counted. Also, these factory overhead costs apply to parts sourced from unrelated suppliers in Japan as well as parts manufactured by Brother.

DOC Position: We agree with Smith Corona. For purposes of this inquiry, the Department determined that these Japanese factory overhead items were more appropriately allocated to the individual parts instead of allocating these costs at the finished goods level. No evidence existed in support respondent's claim that all of these expenses were actually incurred on finished goods only. In fact, certain of these expenses, such as quality control, are more likely to have been incurred throughout the production process, contrary to respondent's claims. No evidence was provided at verification that all of these expenses were included in the submitted Japanese value.

Comment 8: Brother requests that the Department use the negative interest expense as reported in its submission.

Smith Corona argues that short-term interest income earned in Japan is not value added to the product in Japan. As such, by allowing the interest income offset to exceed the total interest expense, the direct production costs of the Japan-made parts would be reduced. Smith Corona contends that this effort is not in accordance with the intent of the statute. Therefore, the ITA should allow the offset of interest income only to the extent of interest expense.

DOC Position: We agree with the petitioner. In accordance with the Department's normal practice, we allowed the offset of interest income against interest expense only to the extent of interest expense. Interest income which exceeds interest expense represents Brother's involvement in investment activities which are not required for daily manufacturing operations. The interest income is not related to production and, therefore, may not be an offset against other production costs. See e.g., Certain Fresh Cut Flowers from Columbia, (54 FR 20491, 20495, May 17, 1990); Final Determination for Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan (55 FR 34585, 34598, August 23, 1991).

Comment 9: Smith Corona argues that royalty payments made by Brother to a related party should not be allocated to U.S. value. According to Smith Corona, such intra-company transfers are not made at arm's length as the Department has required in the past.

Brother asserts that royalty payments are part of SG&A and therefore are properly allocated to the value of all parts. Brother cites *Forklift Trucks*, in which the Department stated, with respect to royalty payments, " * * * we consider general R&D, i.e., R&D expenses that cannot be attributed to one specific product, to be general and administrative expenses." Consistent with the decision in *Forklift Trucks*, Brother maintains that the Department should allocate royalties to the value of Japanese components, third country components, and U.S. components.

DOC Position: We agree with Brother. The expenses are properly classified as general, selling, and administrative expenses, which are properly allocated to the value of Japanese parts, third country parts, and U.S. parts. See e.g., *Forklift Trucks*. Furthermore, we examined the royalty contract at verification and determine that all royalty payments were paid in accordance with the agreement. Even if

we did not allocate royalty payments to U.S. value, the effect would be minuscule and would not affect our determination that circumvention is not taking place.

Negative Final Determination of Circumvention

We determine that no circumvention of the antidumping duty order is occurring within the meaning of section 781(a) of the Act. We determine that the difference between the value of PETs sold in the United States and the value of Japanese components is not small. We note that our determination of "small" in this case is not necessarily synonymous with the determination of "small" that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make such determinations on a case-by-case basis.

Interested parties may request disclosure within five days of the date of the publication of this notice.

This negative determination of circumvention is in accordance with section 781(a) of the Act (19 U.S.C. 1877j) and 19 CFR 353.29.

Dated: November 8, 1991.

Majorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27537 Filed 11-14-91; 8:45 am]

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[A-588-802]

Notice of Final Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

Final Results of Review

Background

On April 3, 1989, the Department published in the *Federal Register* (54 FR 13406) an antidumping duty order on 3.5" microdisks and coated media thereof from Japan. On June 1, 1990, we

published notice of our initiation of antidumping administrative review (55 FR 22366) for the following firms:

- Fuji Photo Film (Fuji).
- Kasei Verbatim.
- Konica Corporation (Konica).
- Memorex Telex Japan (Memorex).
- Sanken Plastics Co. (Sanken).
- Sony Corporation (Sony).
- TDK Corporation (TDK).
- Teijin Memorimedia (TMC).
- Tokyo Materials Co.

Each of the firms listed above received questionnaires by June 28, 1990.

On June 14, 1990, Sanken USA withdrew its requests for reviews of TDK and Tokyo Materials. However, TDK is still being reviewed at its own request. On July 25, 1990, we published notice of our termination of the administrative review of Tokyo Materials (55 FR 30260).

On July 18, 1990, Magmedia, an importer, argued that Sanken USA's request for review of Konica be limited to entries of the subject merchandise produced by Konica for which the requester, Sanken, is the importer of record. On August 16, 1990, Sanken USA withdrew its request for reviews of Konica Corporation and Sanken Plastics Co. On August 13, 1990, Verbatim withdrew its request for review of Kasei Verbatim. Accordingly, the Department of Commerce (the Department) is terminating the administrative review for Kasei Verbatim, Konica, Sanken and Tokyo Materials.

The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act), for the following companies: Fuji, Memorex, Sony, TMC, and TDK.

Case History

On August 1, 1991, the Department published in the *Federal Register* the preliminary results and termination in part of its administrative review of the antidumping duty order on 3.5" microdisks and coated media thereof from Japan (56 FR 36768).

On August 5, 1991, TDK Corporation (TDK) requested a public hearing in this case. On August 9, 1991, Fuji Photo Film (Fuji) also requested a hearing. Case briefs were filed by TDK on August 5, 1991, and by Fuji and Sony Corporation (Sony) on August 12, 1991. On August 19, 1991, the Department notified all five respondents that the case briefs and hearing dates had been rescheduled and that the final results had been postponed until December 6, 1991. The Department held a hearing on September 17, 1991.

Scope of Review

The products covered by this review are 3.5" microdisks and coated media thereof from Japan and are currently classifiable under subheading 8523.20.0000 of the Harmonized Tariff Schedules (HTS). These products were previously classifiable under item 724.4570 of the Tariff Schedules of the United States Annotated (TSUSA). Although the HTS and TSUSA item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

A 3.5" microdisk is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by 3.5" floppy disk drives. The 3.5" microdisk includes single-sided, double-sided, or high-density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. The 3.5" microdisk is intended for use specifically in a 3.5" floppy disk drive. One respondent, Fuji, requested that media sold to a related party be excluded from coverage of this review (see Comment 1).

Period of Review

The period of review (POR) is September 29, 1988, through March 31, 1990.

Such or Similar Merchandise

For all respondent companies, in accordance with section 771(16) of the Act, we established two categories of such or similar merchandise: (1) 3.5" microdisks and (2) coated media.

In accordance with section 773(a)(4)(B) of the Act, where appropriate, we made adjustments for differences in the physical characteristics of the merchandise (difmers) by applying the matching criteria as outlined in appendix V of the original questionnaire used in the investigation.

United States Price

Fuji

For Fuji, we based U.S. price (USP) on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Where sales to the first unrelated

purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions for foreign inland freight and foreign inland insurance.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, and, where appropriate, for certain other deductions.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising and credit expenses. We also made deductions for commissions and indirect selling expenses in the home market and United States, including inventory carrying costs, warehousing expenses, and indirect selling expenses associated with U.S. sales that were incurred in Japan. We recalculated U.S. indirect selling expenses based on information on the record. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of consumption tax that was not collected by reason of exportation of the merchandise.

We also deducted all value added to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the complete microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Because of a clerical error in our preliminary results, we recalculated the value added and media cost allocation factors (see Comment 2). Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the costs of manufacture (COM), (2) movement and packing expenses, and (3) general expenses including selling and administrative expenses, R&D expenses, and interest expenses.

We used Fuji's data where the costs were appropriately quantified or valued. We adjusted the manufacturing costs in Japan for production of the magnetic

media by including interest expense because it was not included in the submission. We calculated interest expense by computing the ratio of Fuji's interest expense to costs of sales from the consolidated financial statements and applying it to the COM. We also adjusted the further manufacturing costs incurred in the United States for production of the 3.5" microdisks by including interest expense because it was not included in the submission. We calculated this interest expense as described above.

Memorex

Memorex reported entries of the subject merchandise that were subsequently re-exported. Because this merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations. Memorex also reported certain entries of the subject merchandise that were used for internal company purposes. Because this merchandise was never sold to an unrelated party in the United States, we have not included it in our calculations.

For Memorex, we based USP on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign inland insurance, foreign brokerage, ocean freight, U.S. brokerage, U.S. duty, U.S. inland freight, U.S. inland insurance, and, where appropriate, for discounts, price protection rebates, and volume rebates. For certain transactions, Memorex reported no values for movement charges, even though the terms of sale indicated that such charges were incurred. Because Memorex provided no explanation for the unreported movement charges, we have used the highest charge or expense reported on other sales as the best information available (BIA), in accordance with section 776(c) of the Act. We also recalculated inventory carrying expenses using the period from the time the merchandise left the warehouse in Japan to the time it was shipped to the final customer in the United States.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising, commissions and credit expenses. We also made deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses associated with the U.S. sales that were

incurred in Japan. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of consumption tax that was not collected by reason of exportation of the merchandise.

Sony

Sony reported entries of the subject merchandise that were subsequently re-exported. Because this merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations.

For Sony, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price base on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and foreign brokerage. For certain transactions, no charges were reported in any one of three fields of movement charges even though the terms of sale indicated that at least one of these fields should have contained an expense. Accordingly, we used as BIA the highest rate reported in any of the three fields of foreign inland freight and applied this amount to the first field of foreign inland freight when there were no amounts reported. Otherwise, we used the charges for foreign inland freight as reported in the response (see, Comment 3). In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that was not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. For certain sales, Sony reported an adjustment to account for billing errors. We applied the adjustment to the reported price. We made deductions for foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, and, where appropriate, for discounts, price protection rebates, and volume rebates. We incorporated data on the record for foreign inland freight, ocean freight and foreign inland insurance which was not used in our analysis for the preliminary results (see,

Comment 4). Where transactions had no values reported for movement charges or selling expenses, we used the highest charge or expense reported by Sony on other sales as BIA, in accordance with section 776(c) of the Act.

In accordance with section 772(e)(2) of the Act, we made further deductions where appropriate, for packing expenses incurred in the United States, advertising, warranty expenses, and credit expenses. We also made deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses associated with the U.S. sales that were incurred in Japan. In accordance with section 772(e)(1) of the Act, we also deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of consumption tax that was not collected by reason of exportation of the merchandise.

Because Sony failed to report further manufacturing costs for media sales, as requested in the original and supplemental questionnaires, we used the weighted-average of the positive margins calculated for Sony transactions for these media sales as BIA, in accordance with section 776(c) of the Act.

TDK

For TDK, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. TDK made certain sales to unrelated parties in Japan with the knowledge that the merchandise was destined for the United States at the time the sales were made. We have treated those sales as purchase price sales. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed prices to unrelated customers in the United States delivered to their Japanese warehouses. We made deductions for foreign inland freight, and foreign inland insurance and, where appropriate, for ship and debit rebates. We recalculated foreign inland freight charges because TDK failed to provide the Department with necessary information for establishing and quantifying the amounts reported on the computer tape (see Comment 6). In accordance with section 776(c) of the Act, as BIA, we used the average monthly per-unit amount reported by TDK in the computer tape submission

for home market inland freight charges. Because loading and storage expenses were included in the freight amounts we used as BIA, we did not deduct these expenses, which were separately reported by TDK (see Comment 7). In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that was not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered, duty paid, prices to unrelated customers in the United States. We made deductions for ocean freight, marine insurance, U.S. duty, U.S. harbor maintenance fees, U.S. inland freight, U.S. brokerage, foreign brokerage, foreign inland insurance, foreign inland freight and, where appropriate, for discounts, price protection rebates, volume rebates, and ship and debit rebates. We recalculated foreign inland freight charges as described above for purchase price sales.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for packing expenses incurred in the United States, direct advertising expenses, cooperative advertising expenses, promotional expenses, samples, warranty expenses, credit expenses, and indirect selling expenses consisting of indirect advertising expenses, inventory carrying costs, and indirect selling expenses associated with the U.S. sales that were incurred in Japan and in the United States.

We also recalculated inventory carrying expenses based on information on the record (see, Comment 8). In accordance with section 772(e)(1) of the Act, we deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of consumption tax that was not collected by reason of exportation of the merchandise.

We deducted all value added in the United States to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the completed microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the COM, (2) movement and

packing expenses, and (3) general expenses including selling and administrative expenses, R&D expenses, and interest expenses.

We used TDK's monthly media costs for further manufacturing as reported in the response (see, Comment 12). We used TDK's data, except in the following instances where the costs were not appropriately quantified or valued: We adjusted the manufacturing costs in Japan for production of the magnetic media by including interest expense because it was not included in the submission. We calculated interest expense by computing the ratio of TDK's interest expense to cost of goods sold from the consolidated financial statements. We also adjusted the further manufacturing costs incurred in the United States for production of the 3.5" microdisks by calculating interest expense as described above and adjusted for the interest expense claimed by TDK (see Comment 10).

TMC

For TMC, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For two shipments of the subject merchandise which entered the United States during the POR, the sale was subsequently cancelled. TMC used some of the microdisks from these shipments to fulfill the requirements of two other sales that were made by TMC Japan prior to the importation of merchandise. The remainder of the media from the two cancelled sales was used to fill six orders placed with TMC's U.S. subsidiary after importation of the two original shipments. Because the first two sales of media were made prior to importation we are treating them as purchase price sales. However, because the remaining six sales were made after importation we have treated them as ESP sales.

We calculated purchase price based on packed, f.o.b Japanese port prices and C&F prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign brokerage, foreign inland insurance, ocean freight, U.S. inland freight, U.S. duty, U.S. brokerage and, where appropriate, for rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price

the amount of the consumption tax that was not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for U.S. bank charges and credit expenses. We also made deductions for U.S. indirect selling expenses, including inventory carrying costs in Japan and in the United States. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of consumption tax that was not collected by reason of exportation of the merchandise.

Foreign Market Value

In order to determine whether there were sufficient sales of microdisks in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales in each such or similar category to the volume of third country sales in the same such or similar category, in accordance with section 773(a)(1)(B) of the Act. Fuji, Memorex, Sony, TDK, and TMC all had viable home markets.

Fuji

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance and, where appropriate, for certain other deductions. We made circumstance-of-sale adjustments, where appropriate, for differences in advertising, credit, and promotional expenses, in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, certain other deductions. We made further deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses,

including inventory carrying expenses. We recalculated home market inland freight and indirect selling expenses based on information on the record. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b)(2). We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

Fuji did not report the requested difmer information for the entire POR. Fuji reported difmer information for the period April 21, 1989 through October 20, 1989, and for the period October 21, 1989 through April 20, 1990. Because Fuji did not report difmer data for the period September 29, 1988, through April 20, 1989, we used as BIA the difmer data submitted for the period April through October 1989, in accordance with section 776(c) of the Act.

Memorex

We calculated FMV based on packed, delivered prices to related and unrelated home market customers. For comparisons with U.S. microdisk sales, we included home market sales of microdisks to related parties because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length. Although Memorex stated that the reported charges and adjustments applied to all sales, there were numerous sales transactions for which no amounts were reported for many of the charges and adjustments. Furthermore Memorex did not provide an explanation of price protection rebates in response to our questionnaire and deficiency letter. In our deficiency letter we also asked Memorex to clarify the charges and adjustments for which no amounts were reported, but it did not do so. Therefore, we are disallowing Memorex's claim for price protection rebates, and, as BIA, we are using the zero amounts reported for charges and adjustments. When making comparisons with ESP sales, we made deductions for inland freight, inland insurance, and where appropriate, for volume rebates. We made further deductions, where appropriate, for royalties, technical services, warranty expenses, and credit expenses.

We made additional deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. In accordance with 19 CFR

353.56(b), the deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

For U.S. sales of media, there were no sales of such or similar merchandise in the home market or in any third-country markets during the POR. Therefore, for media sold in the United States, we based FMV on submitted constructed value (CV), in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing. We used Memorex's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. To calculate general expenses, we computed as BIA the ratio of Memorex's general and administrative expenses to cost of sales as reported on its financial statements and applied this ratio to the reported COM.

2. We calculated selling expenses for CV as the weighted-average direct and indirect selling expenses reported for all sales of the subject merchandise during the POR.

3. For media packing costs, we used as BIA the lowest amount for media packing reported for U.S. sales of disks.

We used actual general expenses "except as described above" in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent. We added U.S. packing costs.

We made circumstance-of-sale adjustments, where appropriate, for royalties, technical services, warranty expenses, and credit expenses. We made further deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b).

Sony

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. We made circumstance-of-sale adjustments, where appropriate, for differences in advertising, credit, and promotional expenses in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for price protection and volume rebates. We made deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commission incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

TDK

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the price to related parties were at or above the price to unrelated parties and, therefore, were determined to be at arm's length.

For comparison to purchase price sales, we made deductions for loading, inland freight, storage fees, inland insurance and, where appropriate, for ship and debit rebates and volume incentive rebates. We made circumstance-of-sale adjustments, where appropriate, for differences in credit and direct advertising expenses in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. TDK failed to provide an adequate response to our request for data to be used in deriving home market packing material costs (see Comment 11). Therefore, we

used, as BIA, the lowest monthly per-unit home marketing packing material cost in the response and deducted this amount from the home market sales price. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for loading, inland freight, storage, inland insurance and, where appropriate, for price protection rebates, ship and debit rebates, and volume incentive rebates. We made deductions, where appropriate, for credit and direct advertising expenses. We also deducted indirect selling expenses, including inventory carrying costs. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We recalculated home market and U.S. packing material costs because TDK failed to provide the Department with necessary information for establishing and quantifying the amounts reported in the computer tape (see Comment 11). In accordance with section 776(c) of the Act, as BIA, we used the average per-unit amount reported by TDK in the computer tape for U.S. packing material costs and applied this amount towards ESP sales. We also used the lowest home market packing material costs reported by TDK in the computer tape. We then deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

In certain instances there were no sales of identical contemporaneous merchandise in the home market with which to compare merchandise sold in the United States. TDK did not provide difference of merchandise information for comparing this product with the next most similar product. For these transactions, because we do not have the necessary information to calculate a margin, the Department applied the weighted-average margin calculated for all other sales as BIA, in accordance with section 776(c) of the Act (see Comment 13).

TMC

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. For certain sales TMC reported an amount to adjust for billing errors. We applied this adjustment to the sale price. We made circumstance-of-sale adjustments, where appropriate, for differences in credit, technical services, warranties, and promotional expenses in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance. We made deductions, where appropriate, for credit, technical services, warranties, and promotional expenses. TMC made no claim for home market indirect selling expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for consumption taxes collected on home market sales and not on export sales.

TMC had sold certain media to an unrelated customer in the home market. TMC then stated that because this unrelated customer exported the subject merchandise to its U.S. subsidiary, sales by TMC to the unrelated customer should be treated as purchase price sales. However, we disregarded these sales since any media shipped by the unrelated customer to the United States during the POR was in the form of completed microdisks the sales of which are already covered in this review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received case briefs from three of the five respondents.

Comment 1

Fuji argues that the Department should exclude U.S. media sales to a related party from coverage of the antidumping order because the imported media represents an insignificant portion of the value of the microdisk after further manufacturing. Fuji cites the Department's decisions in Final Results of Administrative Review of Antidumping Finding: Roller Chain, Other than Bicycle, From Japan (48 FR 51801, November 13, 1983), Preliminary Results of Administrative Review of Antidumping Finding: Expanded Metal of Base Metal From Japan (48 FR 53594, November 28, 1983), Final Results of Administrative Review of Antidumping Finding: Antifriction Bearings (Other

Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19091, May 3, 1989), and Final Results of Administrative Review of Antidumping Finding: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (56 FR 31692, July 11, 1991) (AFB's, in support of its argument.

DOC Position

We disagree with Fuji. The imported media represent a greater percentage of the value of the finished product than in the cases cited by Fuji. In AFB's, we stated that only merchandise otherwise subject to an order which collectively comprises less than one percent of the value of the finished product (which is not covered by the same order), is considered outside of the scope of the order. Further, unlike the cases cited by Fuji, both the imported product and the further manufactured product are subject to the same antidumping duty order. Media is specifically covered by the antidumping duty order. The microdisk into which the media is incorporated is also covered by the order. There is, therefore, no justification for excluding from the order Fuji media sales to its related party.

Comment 2

Fuji maintains that the Department incorrectly determined the value-added allocation factor for calculating the further manufacturing costs of incorporating media into microdisks. Fuji states that in its computer program, the Department combined unit values of different currencies when devising the value added allocation factor. Fuji argues that we should use a currency conversion figure to correct this error.

DOC Position

We agree with Fuji and have revised our calculations of the value-added allocation factor by incorporating an equivalent exchange rate value for the final results of this review.

Comment 3

Sony claims that for three fields of foreign inland freight charges, the Department incorrectly applied the highest value as BIA were no values where reported in the computer tape submission for its purchase price transactions. Sony maintains that its foreign inland freight charges were correctly reported and that some fields should be zero because of alternate shipping routes. Therefore, if any one of the three fields of foreign inland freight did not contain a value, then no freight expense was incurred for that field

which represents a particular transportation route.

DOC Position

We agree with Sony. In the preliminary results, we filled in all three fields with the highest charge reported because the response appeared to show that such charges were incurred. Sony's explanation that all three charges are not incurred on each sale is consistent with their response. However, we noted numerous transactions where no amounts were reported for any of the three fields of foreign inland freight. Sony's explanation of foreign inland freight contained in its response and in its brief does not explain why there are transactions for which no foreign freight charges are reported at all. In fact, the narrative response indicates that some freight charge should have been incurred for each sale. Therefore, for sales for which no freight was reported in any of the three fields, we have used as BIA the largest freight expense reported in any of the three fields for all sales.

Comment 4

Sony argues that the Department should not have resorted to BIA in applying the highest rate reported for selling expenses, foreign inland freight, ocean freight, and foreign inland insurance where this data was missing from the computer tape. Sony maintains that the missing data was provided in its original computer tape submission. Sony claims that these selling and movement expenses were not included in the subsequent computer tape used for the preliminary results because of a programming error on its part.

DOC Position

We agree with Sony. In the preliminary results, we used the highest rate reported as BIA because the narrative questionnaire response indicated that such charges were incurred and yet the computer tape showed zero. Sony pointed out that this information was in fact on the record. We determined that use of BIA for the final results is unwarranted because we have the actual information for these expenses. Accordingly, we have used the information reported by Sony.

Comment 5

Sony requests that the Department adjust the BIA margin assigned to its media sales by incorporating the ESP expense data which had been not been included in its computer replacement tape.

DOC Position

We agree with Sony. We have incorporated the data and are using a revised average of the positive margins calculated for Sony transactions for these sales as BIA, in accordance with section 776(c) of the Act.

Comment 6

TDK argues that the Department has no basis for rejecting its reported foreign inland freight charges and resorting to punitive BIA. Based on information on the record, TDK argues that the Department has neither questioned the methodology used by TDK for calculating its foreign inland freight charges nor indicated that it could not trace the amounts reported in the computer tape to source documents contained in the response. TDK maintains that the only reason the Department has offered in rejecting its data is based on the large difference in amounts between home market and U.S. freight charges. TDK claims that, in its July 15, 1991 submission, it provided an explanation for the difference between home market and U.S. freight charges and supporting documentation. TDK further maintains that the Department had all of the required information for tracing its reported home market and U.S. freight charges from the computer tape to the source documents in the response. Therefore, TDK contends that the Department must accept its freight charges reported for each transaction for the final results.

DOC Position

We agree with TDK that punitive BIA should not be used. TDK provided sample calculations for home market inland freight and for foreign inland freight charges. However, the information provided for foreign inland freight was inadequate because its source documents were not translated into English. Thus, we were unable to duplicate TDK's sample calculation. Nor could we use the same methodology for any of the remaining freight charges. Moreover, because TDK's initial response contained only a sample calculation for home market inland freight, we were unable to confirm or apply TDK's methodology for any of the remaining foreign inland freight charges. Accordingly, we determine that we should use BIA instead of TDK's reported charges. However, because TDK did attempt to provide the information in the manner requested, we have resorted to a non-punitive BIA for the final results. As BIA, we are using the average home market inland freight charge reported by TDK. We selected

this BIA in accordance with the hierarchy set forth in AFB's.

Comment 7

TDK claims that for its purchase price sales, the Department doubled-counted loading charges by creating a new field for foreign inland freight which also included loading charges. TDK argues that the Department should only deduct from the gross unit price the loading expenses which it reported in the response and not the new field of foreign inland freight which the Department created for its calculations.

DOC Position

We agree with TDK. In the preliminary results, we incorrectly deducted loading and storage expenses from the sales price. As BIA, we also made a deduction for the average home market inland freight charges which included loading and storage expenses. For the final results, we are deducting only the BIA foreign inland freight which includes an amount for loading and storage expenses.

Comment 8

TDK claims that the Department incorrectly applied U.S. interest rates to inventory carrying expenses incurred by TDK and not by TEC. TDK argues that the Department should apply the Japanese interest rate for the period when title of the goods is held by TDK and the U.S. interest rate when title is held by TEC. TDK contends that TEC's inventory carrying period should be calculated from the date TEC receives the goods until the date of shipment from TEC to the customer.

DOC Position

We agree with TDK and have used the U.S. interest rate during the period when title of the goods was held by TEC. In its brief, TDK indicates that since it sells to TEC on a C.I.F. basis, title transfers "after importation" and "after importation" means the date of receipt by TEC. This information is nevertheless contradicted by information contained in the response.

In its response, TDK does not explicitly state when title transfers from TDK to TEC. Rather, TDK implies that title transfers at any one of several dates. These dates produce varying inventory carrying periods. Based on TDK's explanation of TEC's accounting system, intra-company selling terms, and the inclusion in the response of conflicting dates as to when title transfers from TDK to TEC, we have determined that the most accurate indicator of when title transfers to TEC is the date the merchandise enters the

United States. Therefore, we have applied U.S. interest rates from the time the merchandise enters the United States (*i.e.*, the date of U.S. customs entry) up to the date of shipment from TEC to the customer.

Comment 9

TDK argues that the Department should have used its actual reported interest expense for the further manufacturing costs of the media because the interest expense reported by TDK was provided on a cost-of-goods sold basis as requested by the Department. TDK maintains that the Department has no basis for rejecting its reported interest expense and recalculating the interest expense as a percentage applied to the media cost. TDK further points out that although the Department should have accepted its interest expense, the Department erred when it calculated an interest percentage and applied this percentage to the media cost. TDK maintains that the Department double-counted the interest expense because the interest expense had already been included in the media cost.

DOC Position

We disagree with TDK. Although we requested that TDK provide its interest expense on a cost-of-goods sold basis, TDK did not do so using data from its consolidated financial statements. Accordingly, we followed our standard practice, which is to calculate interest expense for manufacturing costs by using the amounts reported in a company's consolidated financial statements as a percentage of the cost of goods sold. We used this same methodology in Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-made Fiber From Hong Kong (55 FR 30733, July 27, 1990) and Final Results of Administrative Review of Antidumping Finding: Television Receivers Monochrome and Color From Japan (56 FR 34184, July 26, 1991). Furthermore, we did not include the interest expense that TDK reported in our final calculations. Thus, there is no double-counting.

Comment 10

TDK argues that when the Department calculated TDK's overall average interest expense it should have only used the interest expense for four of seven models of microdisks because three of the models had no values for interest expense.

DOC Position

We disagree with TDK. TDK's overall average interest expense is by definition the average expense incurred on all seven models. Excluding the zero expense for the three models from the average would give us a four model average, not an overall average.

Comment 11

TDK argues that the Department has no basis for rejecting its reported home market and U.S. packing material costs and resorting to punitive BIA. Based on information on the record, TDK argues that the Department has neither questioned the methodology used by TDK for calculating its home market and U.S. packing material costs nor indicated that it could not trace the amounts reported in the computer tape to source documents contained in the response. TDK maintains that the only reason the Department has offered in rejecting its data is based on the large difference in amounts between home market and U.S. packing material costs. TDK provided an explanation for the differences in home market and U.S. packing material costs in its July 15, 1991, submission. Therefore, TDK contends that having complied with the Department's request for this information, there is no basis for using a punitive substitute rate as BIA for home market and U.S. packing material costs.

DOC Position

We agree with TDK that an adverse BIA should not be used for determining U.S. packing material costs. However, we disagree with TDK that an adverse BIA should not be used for determining home market packing material costs.

Regarding U.S. packing material costs, in our May 1, 1991, deficiency letter, we requested that TDK provide sample calculations of packing material costs for products sold in the U.S. market. TDK did provide one sample calculation for U.S. packing material costs and the monthly packing material costs incurred for each model sold during the POR. However, in applying the calculation methodology and additional costing data provided by TDK for U.S. packing material costs to the remaining U.S. packing costs reported in the computer tape, we found substantial discrepancies between the amounts reported in the computer tape and the amounts in the narrative response. TDK had indicated that the number of disks packed for each model was essential in calculating the per unit amount reported in the computer tape. However, TDK failed to provide us with information on how to determine for each model the number of

disks included in a package. Furthermore, TDK failed to explain this issue at the hearing. TDK's claim that the number of disks is contained in the product code for each model is not accurate. We examined numerous product codes which contained no such numbers. Except for the sample calculation, there was no accurate method of determining how many disks were packed for each model sold in the U.S. Therefore, we could not tie the U.S. packing material costs reported in the computer tape to the source information contained in the response. However, because TDK attempted to supply the information in the form requested, we have not resorted to an adverse BIA. As BIA however, we have applied an average U.S. packing material cost to all U.S. sales.

Regarding home market packing material costs, our May 1, 1991, deficiency letter requested that TDK provide a sample calculation for packing material costs reported in the computer tape. TDK provided neither a sample calculation for packing material costs nor monthly packing material costs incurred for each model sold during the POR. TDK simply referred us to its sample calculation used for U.S. packing material costs as a means for calculating home market packing material costs. TDK also failed to explain this issue at the hearing.

As noted above, we could not rely on TDK's sample calculation methodology. Therefore, TDK failed to provide the necessary information required to calculate the per unit packing material costs for home market sales as reported in the response. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available (see, e.g., AFB's). Because TDK did not provide, nor attempt to provide, us with the requested information necessary for calculating home market packing material costs, we have resorted to an adverse BIA for these charges. As BIA, we are applying the lowest amount reported for home market packing material costs to all home market sales.

Comment 12

TDK argues that the Department has no basis for rejecting its reported monthly media costs and using as BIA the highest monthly cost reported for one and two megabyte media in calculating further manufacturing costs. TDK maintains that it has provided substantial supporting documentation

for its monthly media cost data and that the Department should incorporate this information for the final results.

DOC Position

We agree with TDK. We rejected its reported monthly media costs for the preliminary results because it appeared that there were discrepancies between the narrative and computer tape responses. We have reexamined these responses in light of the arguments raised in TDK's brief and agree that TDK has provided substantial supporting documentation for its reported calculation of media cost. However, we have determined that the media costs listed in TDK's computer tape submission differ from the media costs reported in the response because of a mechanical error. Therefore, we have used the media cost information provided in TDK's response instead of the media costs listed in the computer tape.

Comment 13

TDK contends that in the preliminary results, the Department matched sales of different types of merchandise where the difmer exceeded 20 percent. TDK contends that the Department should revert to CV or relax the rules of the 90/60 test where there are no contemporaneous identical matches of the merchandise found in the home market.

DOC Position

We agree with TDK that we erred in making a difmer adjustment which exceeded 20 percent. However, we disagree with TDK that the Department has the authority to relax the 90/60 rule in this instance.

In the preliminary results, we matched sales of one type of merchandise to contemporaneous sales of similar merchandise by applying a difmer using COM data which TDK provided for further manufacturing. Some of these price-to-price comparisons had difmers in excess of 20 percent. In addition, upon further analysis of the data, we determined that the COM data reported for further manufacturing is not suitable for a difmer adjustment because it incorrectly included fixed factory overhead costs. We were unable to identify fixed factory overhead costs within the COM data and thus were unable to separate the variable manufacturing costs associated with the physical differences in the similar merchandise being compared.

In its original response, TDK indicated that the products sold in both the U.S. and home markets were identical. In our

June 19, 1991, letter, we requested that TDK report difmer information. In response to our letter, TDK stated that it did not provide any difmer data because there were identical sales. Further, we never requested TDK to provide CV data because we understood that identical products were sold in both markets. We did not realize that there were non-contemporaneous sales of identical merchandise until the preliminary results. For the final results, we do not have contemporaneous matches for all U.S. models. We also not have suitable difmer information or CV data. We determined that with respect to these sales, TDK attempted but was unable to provide the information in the form requested. Therefore, we are resorting to non-adverse BIA for these sales of merchandise. We have used as BIA for these U.S. sales without an FMV, the weighted-average margin of all sales by adding the weighted-average margin to the net U.S. price to calculate FMV.

Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Margin (percent)
Fuji.....	12.60
Memorex.....	16.96
Sony.....	6.68
TDK.....	10.04
TMC.....	5.82

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for all other exporters/producers will be 16.96 percent. This is the highest non-BIA rate for any firm

included in this review. These deposit requirements are effective for all shipments of Japanese 3.5" microdisks and coated media entered, or withdrawn from warehouse, consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: November 7, 1991

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27536 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Rochester, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-107. *Applicant:* University of Rochester, Rochester, NY 14620. *Instrument:* Eye Movement Tracker, Model 2020. *Manufacturer:* ELMAR Inc., Canada. *Intended Use:* See notice at 56 FR 36776, August 1, 1991.

Reasons: The foreign instrument provides a lightweight CCD camera coupled to an image processor with a sampling rate of 120/second and stable resolution to 0.1 degree. *Advice Submitted By:* National Institutes of Health, September 12, 1991.

Docket Number: 91-101. *Applicant:* U.S. Department of Agriculture, Agricultural Research Service, Urbana, IL 61801. *Instrument:* Chlorophyll Fluorometer, Model PAM 101.

Manufacturer: Heinz Walz, Germany. *Intended Use:* See notice at 56 FR 34187, July 26, 1991. *Reasons:* The foreign instrument provides pulse modulation with selective signal amplification for optimal chlorophyll fluorescence. *Advice Submitted By:* National Institutes of Health, September 12, 1991.

Docket Number: 91-099. *Applicant:* Wayne State University, Detroit, MI 48201. *Instrument:* Organ Baths and Field Stimulating Electrodes.

Manufacturer: Hugo Sachs Electronik, West Germany. *Intended Use:* See notice at 56 FR 34187, July 26, 1991.

Reasons: The foreign instrument provides four isolated and independent organ vessels, permitting multiple experiments, and superior oxygenation. *Advice Submitted By:* National Institutes of Health, September 12, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-27532 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-DS-M

equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, *Statutory Import Programs Staff*.
[FR Doc. 91-27533 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Memphis, TN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as \$184,260 in Federal funds and a minimum of \$32,516 in non-Federal (cost sharing) contributions from 04/1/92 to 03/31/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Memphis, Tennessee geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business

community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered.

Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements

satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is December 20, 1991. Applications must be postmarked on or before December 20, 1991. Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, room 7B23, Dallas, Texas 75242.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the

Atlanta Regional Office on (404) 730-3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1930, Atlanta, Georgia 30308.

Note: A pre-application conference will be held at the above address on December 4, 1991 at 9 a.m.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: November 8, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.
[FR Doc. 91-27465 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Hearing

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input on its proposed Shrimp Fishery Management Plan (FMP). The proposed FMP, approved by the Council to take to public hearing, includes: (1) A definition of overfishing; (2) a Federal permit requirement to harvest shrimp outside state waters; (3) provisions for states to request Federal closures in severe freeze years when white shrimp stocks decline by 80 percent or more; and (4) a control date for possible limited entry.

DATES: Public comments must be received by December 27, 1991. See "SUPPLEMENTARY INFORMATION" for dates, times, and locations of hearings.

ADDRESSES: Written comments on the proposed FMP should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone (803) 571-4366.

SUPPLEMENTARY INFORMATION: The public hearings will begin at 8 p.m., and adjourn at 10 p.m., local time, and are scheduled as follows:

1. Monday, December 9, 1991—Cocoa Beach Hilton, 1550 N. Atlantic Avenue, Cocoa Beach, FL, (407) 779-0003.
2. Tuesday, December 10, 1991—Holiday Inn-

Oceanfront, 1617 N. First Street, Ocean View I & II rooms, Jacksonville Beach, FL, (904) 249-9071.

3. Wednesday, December 11, 1991—Glynn Mall Suites Hotel, Carousel/Chariot Hall rooms, 500 Mall Boulevard, Brunswick, GA, (912) 264-6100.
4. Wednesday, December 11, 1991—Carteret Community College, Joselyn Auditorium, 3505 Arendell Street, Morehead City, NC, (919) 247-3094.
5. Thursday, December 12, 1991—Best Western Sea Island Inn, 1015 Bay Street, Beaufort, SC, (803) 524-4121.
6. Thursday, December 12, 1991—New Hanover County Courthouse, 320 Chestnut Street, room 302, Wilmington, NC, (919) 341-7147.
7. Friday, December 13, 1991—South Carolina Wildlife & Marine Resource Department, Ft. Johnson Road, Charleston, SC, (803) 795-6350.

Dated: November 7, 1991.

David S. Crestin,

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

[FR Doc. 91-27433 Filed 11-14-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Addition and Deletion

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Addition to and Deletion From Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: December 16, 1991.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 19, September 6 and 20, 1991, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (56 FR 33265, 44078 and 47743) of proposed addition to and deletion from the Procurement List:

Addition

After consideration of the material

presented to it concerning capability of qualified nonprofit agencies to provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the service listed.

c. The actions will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial at the following Columbus, Ohio locations:

Federal Building, 200 N. High Street
and

Parking Facilities, Spring and Pearl Streets.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Belt, High Visibility, 8465-01-163-8835.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-27530 Filed 11-14-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies

employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 16, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Plastic Cutlery, Medium Weight
7340-00-NIB-0009

7340-00-NIB-0010

7340-00-NIB-0011

7340-00-NIB-0012

(Requirements of the Navy Exchange Service Command)

Clip System, Paper

7510-01-317-4219

7510-01-317-4220

7510-01-317-4228

Services

Janitorial/Custodial

934th Tactical Airlift Group

Minneapolis-St. Paul International Airport

Minneapolis, Minnesota

Janitorial/Custodial

Air Traffic Control Tower and Flight Service Station

Youngstown Municipal Airport

Youngstown, Ohio

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-27531 Filed 11-14-91; 8:45 am]

BILLING CODE 6820-33-M

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons with severe disabilities.

EFFECTIVE DATE: December 16, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 20, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 47743) of a proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Laundry Service, Youngstown Municipal Airport, Vienna, OH.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-27608 Filed 11-14-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposed Navigation Project Compton Creek and Shoal Harbor Belford, Monmouth County, NJ

October 17, 1991.

AGENCY: Corps of Engineers, Army, DOD.

ACTION: Notice To Withdraw Intention To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The New York District of the U.S. Army Corps of Engineers is rescinding plans to prepare a draft Environmental Impact Statement for proposed measures to improve navigation in Compton Creek and Shoal Harbor, Belford, New Jersey. This project is necessary to reduce navigation problems for the commercial fishing fleet which uses the existing channel to serve as their docking and market area. The existing Federal navigation project depth of 12 feet mean low water (MLW) extending from deep water in Sandy Hook Bay to the first bend in Compton Creek then 8 feet MLW to the Main Street Bridge is no longer adequate to support the present fishing fleet.

FOR FURTHER INFORMATION CONTACT: ATTN: Mike Millard, Project Manager, (212) 264-1060, or ATTN: Joe Debler, EIS Coordinator, (212) 264-4863 Planning Division, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278-0090.

SUPPLEMENTARY INFORMATION: This action was authorized under section 107 of the Continuing Authority Program of the River and Harbor Act of 1960.

1. Location and Description of Proposed Action: The project is located on Sandy Hook Bay in Monmouth County, New Jersey. The plan selected during the Reconnaissance phase of the study would be to deepen the existing project by 2 feet (14) & (10) and appropriate widening to accommodate the passing vessels and the new depths. A deposition basin to reduce maintenance dredging is also proposed for Compton Creek to be incorporated into the existing Federal channel. The plan also provides for continued maintenance of the project for a period of 50 years. Disposal of dredged material will be at the authorized mud dump site.

2. Relocation of the deposition basin away from wetland areas and the elimination of the weir resulted in the

Procurement List; Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

decision that an environmental assessment would be adequate.

3. Estimated date of DRAFT

ASSESSMENT availability: December 1991.

Bruce A. Bergmann,
Chief, Planning Division.

[FR Doc. 91-27513 Filed 11-14-91; 8:45 am]

BILLING CODE 3710-06-M

Department of the Navy

Patent License; Drug Screening Systems, Inc.

AGENCY: Department of the Navy.

ACTION: Intent to Grant Exclusive Patent License; Drug Screening Systems, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Drug Screening Systems, Inc. a revocable, nonassignable, exclusive license in the United States and certain foreign countries to practice the Government-owned inventions described in U.S. Patent Application Serial No. 07/574,175, "Enzymatic Assays Using Superabsorbent Materials" filed August 29, 1990 and U.S. Patent Application Serial No. 07/578,390, "Microassey on a Card" filed September 7, 1990.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000.

FOR FURTHER INFORMATION CONTACT:
Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: November 5, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.
[FR Doc. 91-27437 Filed 11-14-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed

information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 16, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT:
Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each Proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: November 12, 1991.

Mary P. Liggett,
Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Revision.

Title: Application for Emergency Immigrant Education Program.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 57.

Burden Hours: 8,892.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Emergency Immigrant Education Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: New.

Title: Report of Performance for the Ronald E. McNair Post-Baccalaureate Achievement Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 42.

Burden Hours: 210.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Grantees that have participated in the Ronald E. McNair Post-Baccalaureate Achievement Program are to submit these reports to the Department. The Department uses the information to evaluate project accomplishments, compliance, prior experience and collect impact data for budget submissions and congressional hearings.

Office of Postsecondary Education

Type of Review: Revision.

Title: Common Core of Data.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 56.

Burden Hours: 5,340.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: These surveys provide information about student membership, graduates, dropouts; teachers and other public education staff; schools and school districts; and revenues and expenditures for public education. The Department will use the information to create sampling frames, allocate federal funds and carry out NCES' mandated studies.

[FR Doc. 91-27543 Filed 11-14-91; 8:45 am]

BILLING CODE 4000-1-M

[CFDA No. 84.129T]

Experimental and Innovative Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992**AGENCY:** Department of Education.
ACTION: Correction notice.

SUMMARY: On September 18, 1991, a notice establishing the application deadline date for the Experimental and Innovative Training program was published in the Department's combined application notice in the **Federal Register**. On page 47275, in the fourth column, the application deadline date for the Experimental and Innovative Training program should read 11/21/91 instead of 11/18/91.

Dated: November 8, 1991.

Robert R. Davila,
Assistant Secretary, Office of Special Education and Rehabilitative Services.
[FR Doc. 91-27447 Filed 11-14-91; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**Bonneville Power Administration****Suspension of Puget Sound Power and Light Company Application for Presidential Permit; Notice of Intent To Prepare an Environmental Impact Statement**

AGENCIES: Bonneville Power Administration (BPA), Office of Fuels Programs (OFP), U.S. Department of Energy (DOE).

ACTION: Suspension of Presidential Permit Application, and notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: At the request of Puget Sound Power and Light Company (Puget), OFP has suspended its consideration of Puget's Presidential Permit Application (Docket No. PP-91). BPA plans to prepare an EIS on a joint BPA/Puget electric transmission project.

FOR FURTHER INFORMATION CONTACT:

John Taves, Environmental Coordinator for Engineering—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208-3621, (503) 230-4995.

Ellen Russell, Office of Fuels Programs (FE-52), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9624.

SUPPLEMENTARY INFORMATION: On August 31, 1990, Puget asked OFP to

suspend consideration of Puget's Presidential Permit Application until such time as Puget should request that its application be considered further. Puget's request for a suspension was submitted subsequent to BPA and Puget signing a letter expressing their intention to negotiate formal agreements for a new joint BPA/Puget electric transmission project.

Puget applied for a Presidential Permit on May 31, 1989 (see 54 FR 28091), to construct, connect, operate, and maintain two 23-mile, 230-kilovolt (kV) overhead electric transmission lines from Bellingham, Washington, to the U.S.-Canada border near Lynden, Washington. The project was proposed in order to resolve transmission deficiencies in the locality and to provide Puget with increased transfer capacity with direct access to Canadian hydroelectric power via an interconnection with the British Columbia Hydro and Power Authority. At the time Puget requested the suspension, OFP was preparing an EIS for the project.

BPA had concurrently been investigating ways to solve problems of overloading an existing BPA 230-kV line between its Custer and Bellingham Substations in Washington, and a BPA 230/115-kV transformer at its Bellingham Substation, as well as to increase power transfers between Canada and the Pacific Northwest.

BPA and Puget subsequently determined, through joint studies, that a joint project could potentially serve both utilities' needs by resolving local transmission deficiencies and regaining and firming up transfer capability between Canada and the Pacific Northwest. The joint project would consider local regulations bearing on transmission projects, including the recently revised Whatcom County ordinance which restricts transmission line construction on new right-of-way to 115 kV or less, and potential development of electric generation in the Bellingham area.

Action. BPA is proposing to rebuild its existing single-circuit 230-kV line between Custer Substation and Sedro Woolley to double-circuit, on the existing right-of-way. To allow for future long-term transmission needs and to optimize the use of the existing corridor, consideration may be given to constructing the 230-kV double-circuit line to 500-kV standards instead, and operating it at 230-kV. Puget proposes to install a 230/115-kV transformer at BPA's Bellingham Substation and rebuild two 115-kV lines from its Bellingham Substation to BPA's Bellingham Substation.

Alternatives. Alternatives identified for possible evaluation in the EIS at this time are: (1) No Action (the consequences of continuing to operate under present conditions); (2) rebuild of BPA's 230-kV line between Custer and Bellingham to double-circuit, construction by Puget of two 230-kV lines from its Bellingham Substation to BPA's Bellingham Substation, a rebuild of Puget's existing 115-kV line to a 230-kV line from Puget's Bellingham Substation to its substation in Sedro Woolley, and installation of a 230/115-kV transformer at Puget's Bellingham Substation.

Other potential plans resulting from preliminary studies such as adding numerous 115-kV lines will be addressed during scoping; Puget's suspended Presidential Permit Proposal will also be discussed, as needed.

Identification of Environmental Issues. Issues presently identified for consideration in the EIS include: (1) Potential health effects associated with electric and magnetic fields; (2) acquisition and use of any right-of-way; (3) visual effects from new or rebuilt lines; (4) potential effects on wetlands/floodplains; and (5) consistency with State and local environmental and land use regulations and plans. As 100-year floodplains and wetlands near the Nooksack and Samish Rivers may be crossed by the proposal, the EIS will analyze potential impacts in those areas.

As a continuation of DOE's environmental process, BPA will now take the lead for public involvement and preparation of an EIS covering the new joint project. Information pertaining to the new proposal and alternatives will be distributed in the fall of 1991, with a solicitation for identification of environmental concerns. Once dates are determined, scoping meetings and the period of scoping will be announced by separate notices. BPA invites all comments and suggestions on the scope of the EIS and will announce to the public in a separate notice the closing date for these comments and suggestions. Comments and suggestions received after the closing date will be considered to the extent practical.

Issued in Washington, DC, on October 4, 1991.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-27525 Filed 11-14-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-649-000, et al.]

Duke Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER91-649-000]

November 6, 1991.

Take notice that on October 2, 1991, Duke Power Company (Duke) tendered for filing appendix A to the testimony of W.R. Stimart, which was inadvertently omitted from the Duke's September 19, 1991 filing in this docket.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Montana-Dakota Utilities Company

[Docket No. ER91-658-000]

November 6, 1991.

Take notice that on October 30, 1991, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing additional information regarding its request for authority to amend its current contract with the United States Department of Energy, Western Area Power Administration (Western) to permit certain short-term purchases of energy by Western during the 1991-1992 winter season.

The additional data filed includes cost support for the quoted rates which are calculated in accordance with Article 23.a of FERC Rate Schedule No. 19.

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the amended contract be made effective as of September 30, 1991.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Public Service Company

[Docket No. ER92-140-000]

November 6, 1991.

Take notice that on October 30, 1991, Southwestern Public Service Company (Southwestern) tendered for filing a proposed rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The rate schedule provides for the sale of full requirements electric power and energy from Southwestern to Cap Rock beginning June 1, 1993.

Southwestern is tendering the filing prior to 120 days before it is to become

effective because the agreement is predicated on regulatory approval and the construction of facilities.

Southwestern is proposing to charge Cap Rock the same rates it currently charges Golden Spread Electric Cooperative, Inc. for full requirements service.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. The United Illuminating Company

[Docket No. ER92-139-000]

November 6, 1991.

Take notice that on October 30, 1991, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Green Mountain Power Corporation (GMP). The rate schedule corresponds to a letter agreement, dated October 25, 1991, between UI and GMP. The commencement date for service under the agreement is November 1, 1991. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to GMP. Copies of the filing have also been mailed to the Vermont Public Service Board.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Company

[Docket No. ER92-137-000]

November 6, 1991.

Take notice that on October 29, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for negotiated sales of available power by Tampa Electric to the Kissimmee Utility Authority (Kissimmee). Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (Negotiated Interchange Service) under the existing agreement for interchange service between Tampa Electric and Kissimmee.

Tampa Electric proposes an effective date of January 1, 1992, for the Letter of Commitment.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER92-138-000]

November 6, 1991.

Take notice that on October 29, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Kissimmee Utility Authority (Kissimmee) of 26 megawatts of capacity and energy from Tampa Electric's Big Bend Station coal-fired generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with Kissimmee.

Tampa Electric proposes an effective date of January 1, 1992, for the Letter of Commitment.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: November 20, 1991 in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Company

[Docket No. FA90-4-7001]

November 6, 1991.

Take notice that on August 5, 1991, Pennsylvania Electric Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Electric Company, Boston Edison Company, Montauk Electric Company

[Docket No. ER92-141-000]

November 6, 1991.

Take notice that on October 30, 1991, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montauk Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments, and carrying charges including local tax rates, for the twelve-month period ending December 31, 1990. Commonwealth states that this supplemental data is submitted pursuant to a letter in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montauk Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1989.

Copies of said filing have been served upon Boston Edison Company, Montauk Electric Company, New England Power

Company and the Massachusetts Department of Public Utilities.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER90-555-000]

November 6, 1991.

Take notice that on October 10, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing additional information and data requested by staff in the above-referenced docket.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER90-540-001]

November 6, 1991.

Take notice that on October 31, 1991, Virginia Electric and Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Camden Cogen L.P.

[Docket No. QF90-87-002]

November 6, 1991.

On October 25, 1991, Camden Cogen L.P. (Applicant) of 1600 Smith Street, suite 5000, Houston, Texas 77002, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for 120.84 MW [51 FERC ¶ 62,210 (1990)]. The instant recertification is primarily requested to reflect a change in the ownership and an increase in the net power output to 136.8 MW.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice. 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 petition to intervene.

12. Maine Electric Power Company

[Docket No. ER92-46-000]

November 6, 1991.

Take notice that on October 25, 1991, Maine Electric Power Company (MEPCO) tendered for filing its Second

Letter Amendment to the Transmission Service Agreement Between MEPCO and Massachusetts Municipal Wholesale Electric Company dated November 1, 1988.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER91-489-000]

November 7, 1991.

Take notice that on October 29, 1991, Pacific Gas and Electric Company tendered for filing a second amended filing under FERC Docket No. ER91-489-000. This docket, initially filed on June 14, 1991, effected Rate Schedule FPC No. 29, with Pacific Power and Light Company (PP&L), and Rate Schedule FERC No. 119, with the Central California Power Agency (CCPA). PG&E's first amended filing (September 11, 1991) resolved questions between PG&E and CCPA regarding the use of the Automatic Adjustment Clause for revising Cost of Ownership rates. This second amended filing is in response to comments from FERC Staff and consists of revised supplement pages to the changed rate schedules which state that the Cost of Ownership rates may change by way of an Automatic Adjustment Clause up to a stated cap.

Copies of this filing have been served upon CCPA, PP&L and the CPUC.

Comment date: November 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Corporation

[Docket No. ER91-662-000]

November 7, 1991.

Take notice that on October 23, 1991, Portland General Electric Corporation tendered for filing an Amendment to the Notice of Cancellation of Non-firm Energy Service Schedule PGX-1 in the above-referenced docket.

Comment date: November 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Electric Company

[Docket No. ER91-482-000]

November 7, 1991.

Take notice that on October 22, 1991, Pennsylvania Electric Company (Penelec) tendered for filing an amendment in the above-referenced docket.

Comment date: November 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER92-135-000]

November 7, 1991.

Take notice that on October 28, 1991, Consolidated Edison Company of New York, Inc. (Con Ed) tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 74 for interruptible transmission service to Pennsylvania Power & Light Company (Penn P&L). The Supplement adds interruptible transmission service from an additional source, Orange and Rockland Utilities, Inc., at the existing rate (2.6 mills per kWh) under the Rate Schedule. Con Edison has requested an effective date 60 days after submission of the Supplement for filing or such earlier effective date as the Commission may specify.

Con Edison states that a copy of this filing has been served by mail upon Penn P&L.

Comment date: November 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Central Illinois Public Service Company

[Docket No. ER91-547-000]

November 7, 1991.

Take notice that on October 25, 1991, Central Illinois Public Service Company (CIPS) tendered for filing additional information with respect to its filing of July 1991 in the docket referenced above.

Comment date: November 22, 1991 in accordance with Standard Paragraph E at the end of this notice.

18. Iowa Power Inc.

[Docket No. ES92-8-000]

November 7, 1991.

Take notice that on October 29, 1991, Iowa Power Inc. filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue \$135 million of promissory notes to commercial banks and commercial paper dealers on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

Comment date: November 29, 1991 in accordance with Standard Paragraph E at the end of this notice.

19. Cambridge Electric Light Company

[Docket No. ER91-688-000]

November 7, 1991.

Take notice that on September 30, 1991, Cambridge Electric Light Company (Cambridge) tendered for filing its 4th

annual informational filing concerning the net cost of construction for the month ending December 31, 1990.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp Electric Operations

[Docket No. ER92-119-000]

November 7, 1991.

Take notice that on October 15, 1991, PacifiCorp Electric Operations (PacifiCorp) tendered for filing a Notice of Cancellation of PacifiCorp Rate Schedule FERC No. 245.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of July 31, 1991 be assigned to the Notice of Cancellation.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket Nos. ER81-177-013 and EL89-6-001]

November 7, 1991.

Take notice that on October 24, 1991, Southern California Edison Company tendered for filing its refund compliance filing pursuant to the Commission's Letter Order dated July 30, 1990 in the above-referenced dockets.

Comment date: November 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

22. Duke Power Company

[Docket No. ER91-527-000]

November 7, 1991.

Take notice that on October 9, 1991, Duke Power Company (Duke) tendered for filing copies of a revised Appendix B in the above-referenced docket.

Comment date: November 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Central Power and Light Company

[Docket No. ER90-289-003]

November 7, 1991.

Take notice that on October 9, 1991, Central Power and Light Company (CP&L) tendered for filing a letter stating that no refunds were necessary in connection with the Level B rates in settlement.

Comment date: November 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Holyoke Water Power Company, Holyoke Power and Electric Company, Western Massachusetts Electric Company, South Hadley Electric Light Department, South Hadley Electric Light Department

[Docket No. ER85-689-000, *et al.*]

[Project Nos. 10675, 10676, 10677 and 10678, 10731, 10732, 10733, and 10734, Docket No. EL91-16-000]

November 7, 1991.

Take notice that on October 25, 1991, Holyoke Power and Electric Company, Holyoke water Power Company, Western Massachusetts Eleric Company and South Hadley Electric Light Department tendered for filing settlement-related documents in the above-referenced dockets.

Comment date: November 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER89-475-000]

November 7, 1991.

Take notice that on October 21, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a notice of termination of the "Interconnection Rate Schedule for Service to Sacramento Municipal Utility District (SMUD), Rate Schedule FERC No. 124. PG&E states that termination of the rate schedule is the result of the Commission's designation of Rate Schedule FERC No. 136.

Comment date: November 20, 1991, in accordance with Standard Paragraph E end of this notice.

26. Kentucky Utilities Company

[Docket No. ER91-590-000]

November 7, 1991.

Take notice that on October 10, 1991, Kentucky Utilities Company (KU) tendered for filing an amendment in the above-referenced docket.

Comment date: November 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power Corporation

[Docket No. ER91-501-000]

November 7, 1991.

Take notice that on October 15, 1991, Florida Power Corporation tendered for filing a letter requesting that the agreements filed on June 24, 1991 in this docket including amendments be withdrawn.

Comment date: November 20, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-27461 Filed 11-14-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4030-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 28, 1991 through November 01, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-G65053-NM Rating LO, Felipito Timber Sale, Implementation, Carson National Forest, Rio Arriba County, NM.

Summary

EPA has no objection to Alternative E which requires less road construction and would allocate all of the existing old growth forest for protection.

ERP No. D-GSA-D80020-MD Rating EC2, Baltimore Health Care Financing Administration Consolidation (HCFA), Sites Selection and Funding, Woodlawn Area, Baltimore County, MD.

Summary

EPA does not believe that sufficient site specific information has been provided to assess the impacts associated with the project. EPA recommends that more detailed information be provided for the traffic analysis and wetlands assessment.

ERP No. D-UMT-F54010-IL Rating EC1, Chicago Central Area Circulator Transit System Improvement, from Division Street (north) Halsted Street and the Chicago River, the Stevenson Expressway, and Lake Michigan, Funding, Cook, DuPage, Kane, Lake, McHenry and Will, IL.

Summary

EPA expressed concern about noise impacts and recommended that the final EIS include a commitment for monitoring and mitigation.

ERP No. DS-AFS-J65097-00 Rating LO, Black Hills National Forest, Land and Resource Management Plan, Implementation, Wyoming and South Dakota.

Summary

EPA has no objections to the proposed action.

ERP No. DS-UAF-J10003-00 Rating LO, Peacekeeper Missiles in Minuteman Silos Program, Deployment, Additional Information, Near Warren AFB, Laramie, Goshen and Platte Counties, Wyoming and Scotts Bluff, Banner and Kimball Counties, Nebraska.

Summary

EPA have no environmental objection to the program installation.

Final EISs

ERP No. F-AFS-J65169-MT, Bender-Retie Timber Sale and Road Construction/Reconstruction, Implementation, Beaverhead National Forest, Wisdom Ranger District, Beaverhead County, MT.

Summary

EPA has no objections to the preferred alternative.

ERP No. F-UAF-J10009-SD, Ellsworth Air Force Base Minuteman II of the 44th Strategic Missile Wing Deactivation, Implementation, Rapid City, Pennington County, SD.

Summary

EPA has no objections to the proposed activity.

Dated: November 12, 1991.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 91-2752 Filed 11-14-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4031-1]**Environmental Impact Statements; Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed November 04, 1991 Through November 08, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910399, Draft EIS, FHW, MN, US 14 Construction, Owatonna to Kasson, Funding and Section 404 Permit, Dodge and Steele Counties, MN, Due: December 30, 1991, Contact: James P. McCarthy (612) 290-3241.

EIS No. 910400, Draft EIS, GSA, GA, Internal Revenue Service, Service Center Annex Consolidation, Construction, Chamblee, GA Due: December 30, 1991, Contact: Alice Coneybeer (404) 331-1831.

EIS No. 910401, Draft EIS, FAA, MN, Minneapolis-St. Paul International Airport, Runway 4-22 Extension, Funding, Wold-Chamberlain Field, Hennepin County, MN, Due: December 30, 1991, Contact: Glen Orcutt (612) 725-7221.

EIS No. 910402, Draft EIS, BOP, NC, Butner Federal Correctional Institution Complex, Construction and Operation, Durham-Granville County Line, NC, Due: December 30, 1991, Contact: Patricia Sledge (202) 514-6470.

EIS No. 910403, Draft EIS, FHW, AR, US 67 Construction, US 67/167 to I-40 West/I-430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR, Due: December 30, 1991, Contact: Carl G. Kraehmer (501) 324-5625.

EIS No. 910404, Draft EIS, FHW, WA, First Avenue South Bridge Improvement, from WA-509 at South Cloverdale Street to WA-99/East Marginal Way South crossing the Duwamish River, Funding, Section 10 and 404 Permits, King County, WA, Due: December 30, 1991, Contact: Barry Morehead (206) 753-2120.

EIS No. 910405, Final EIS, USN, MS, AL, EMPRESS II (Electromagnetic Pulse Radio-Frequency Environment Simulator for Ships) Operation, Gulf of Mexico and Berthing Site Selection, Mobile, AL; Gulfport, MS; or Pascagoula, MS, Due: December 16, 1991, Contact: Lt. Marty McGuirk (703) 602-3341.

EIS No. 910406, Draft EIS, NPS, AZ, Petrified Forest National Park General Management and Develop Concept Plans, Implementation, Navajo and Apache Counties, AZ, Due: January

31, 1992, Contact: Gary Cummins (602) 524-6228.

Dated: November 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-2752 Filed 11-14-91; 8:45 am]

BILLING CODE 6560-50-M

Sand Mountain—Lake Guntersville, Alabama Surface and Ground Water Project Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) in conjunction with the Tennessee Valley Authority and notice of scoping meeting.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2) (c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has identified the need to prepare an Environmental Impact Statement (EIS) and therefore issues this Notice of Intent.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE MAILING LIST CONTACT: Heinz J. Mueller, Chief, Environmental Policy Section, Region IV, Environmental Protection Agency—Federal Activities Branch, 345 Courtland Street NE., Atlanta, GA 30365. Telephone (404) 347-3776 FAX (404) 347-5206.

NEED FOR ACTION: EPA intends to prepare the EIS in cooperation with the Tennessee Valley Authority, the Soil Conservation Service, and other participating Federal, state and local agencies to evaluate the impacts of non-agricultural septic tank pollution of ground water and surface water quality on Sand Mountain and Lake Guntersville, Alabama. The EIS will evaluate alternative wastewater disposal technology, inventory septic tanks and potable well water usage, determine if ground water supplies pose a risk to the public, and develop institutional mechanisms that will assist local governments to deal with ground water pollution.

ALTERNATIVES: The EIS will examine feasible alternatives for meeting the project goals of reducing surface and ground water pollution.

SCOPING: Participation in the EIS process is invited from individuals, organizations, and all governmental agencies. EPA will hold a public scoping meeting at 7 p.m. on November 26 in

Rainesville, Alabama at the Civic Center. A general description of the projects and its goals will be presented. Comments and questions are encouraged and will be addressed and recorded.

ESTIMATED DATE OF DEIS RELEASE: June 11, 1993.

RESPONSIBLE OFFICIAL: Greer C. Tidwell, Regional Administrator.

Dated: November 8, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-27450 Filed 11-14-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Compagnie Generale Maritime et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.803 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011356.

Title: Round the World Space Charter and Sailing Agreement By and Between Compagnie Generale Maritime and Contship Containerlines, Ltd.

Parties: Compagnie Generale Maritime (CGM), Contship Container Lines, Ltd. (Contship).

Synopsis: The Agreement authorizes the parties to charter and cross-charter space to and from each other and to agree upon the scheduling of their vessels in a round-the-world service between the United States and ports worldwide.

By Order of the Federal Maritime Commission.

Dated: November 8, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-27446 Filed 11-14-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[CRADA 92-01]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC) announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop and commercialize enzyme immunoassay technologies for the specific detection of antibodies to the hepatitis B core antigen (anti-HBc) and antibodies to the hepatitis B surface antigen (anti-HBs), which are markers of ongoing or past hepatitis B virus (HBV) infection.

DATES: This opportunity is available until December 16, 1991. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Harriet H. Walls or Howard A. Fields, Ph.D. Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Mailstop A30, Atlanta, GA 30333, telephone (404) 639-2339.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Mailstop C19, Atlanta, GA 30333, telephone (404) 639-2897.

SUPPLEMENTARY INFORMATION: The objective is to commercialize these assays for resource-poor laboratories worldwide. These assays will allow differentiation between those individuals who have protective levels of circulating antibody (anti-HBs) or who are HBV chronic carriers from those who are susceptible to HBV infection and would benefit from the hepatitis B vaccine. In addition, the anti-HBs test can be used to ascertain protective anti-HBs levels in vaccinees and to determine the necessity of a booster dose of hepatitis B vaccine. The collaborator and CDC will jointly evaluate existing reagents including monoclonal and polyclonal antibodies, and recombinant expressed antigens to determine their suitability as immunodiagnostic reagents. Various combinations of these reagents will be

evaluated in different test formats. The final format must have equal sensitivity and specificity to currently licensed tests in the United States. The tests will be evaluated using well-characterized sera banked within the HB. If new reagents are required, they will be prepared according to established procedures. CDC will provide training (including appropriate safety training) for specialized techniques and technical expertise for evaluating the assays.

It is anticipated that all inventions which may arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made. The CRADA will be executed for a 6-month period with the possibility of renewal.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC may not provide funds to the other participants in a CRADA.

Respondents should provide evidence of expertise in the development and evaluation of immunoassays procedures, evidence of experience in commercialization of products for diagnostic use, and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility; and
4. Evidence of commitment and ability to develop and evaluate immunologic tests to the level of a product which will benefit the public interest.

This CRADA is proposed and implemented under the 1986 Federal

Technology Transfer Act: Public Law 99-502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Mailstop C19, Atlanta, GA 30333.

Dated: November 7, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-27466 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-18-M

Availability of Draft 1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of a draft document entitled "1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults," prepared by the Centers for Disease Control, for review and comment.

DATES: To ensure consideration, written comments on this draft document must be received on or before December 16, 1991.

ADDRESSES: Requests for copies of the draft HIV classification system and expanded AIDS surveillance case definition must be submitted to the National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003; telephone (800) 458-5231. Written comments on this draft document should be sent to the same address for receipt by December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Technical Information Activity, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Mailstop E-49, 1600 Clifton Road, NE, Atlanta, GA 30333; telephone: (404) 639-2076.

SUPPLEMENTARY INFORMATION: The CD4+, or T-helper, lymphocyte is the primary target cell for HIV infection, and a decrease in the number of these cells correlates with the development of HIV-related illness. The 1992 HIV classification system is based on the number of CD4+ lymphocytes to provide uniform guidelines for the

categorization of HIV-related clinical conditions. This system is intended for use in clinical and public health practice and will replace the classification system published by CDC in 1986. CDC is also expanding the AIDS surveillance case definition used for national surveillance of AIDS in adults and adolescents to include all HIV-infected adults and adolescents with CD4+ lymphocyte counts less than 200/mm³. This expansion includes the clinical conditions in the case definition published in 1987.

Dated: November 12, 1991.

Walter R. Dowdle,

Acting Director, Centers for Disease Control.

[FR Doc. 91-27606 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-18-M

Energy Related Epidemiologic Research Workshop

The National Center for Environmental Health and Injury Control (NCEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Workshop on Energy-Related Epidemiologic Research.

Times and Dates: 8:30 a.m.-5 p.m., December 3, 1991; 8:30 a.m.-4 p.m., December 4, 1991.

Place: Stouffer Waverly Hotel, 2450 Galleria Parkway NW., Atlanta, Georgia 30339.

Status: Open to the public, limited only by the space available.

Purpose: To solicit individual outside advice from scientists and representatives of both workers and the public regarding epidemiologic research needs in and around Department of Energy facilities, as well as other energy-related epidemiologic research needs. The results of the workshop will be used in developing the proposed research agenda to be presented to the proposed Advisory Committee for Energy-Related Epidemiologic Research, Department of Health and Human Services.

Matters to be Discussed: The workshop will be divided into five panels which will discuss the following topic areas: (1) Environmental Exposure Assessment; (2) Occupational Exposure Assessment; (3) Environmental Epidemiology; (4) Occupational Epidemiology; and (5) Communications and Public Involvement. After panel members have had an opportunity to present their individual ideas, the discussions will be opened to all participants.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Leeann Sewell, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEHIC, CDC, 1600 Clifton Road NE., (F-28), Atlanta, Georgia 30333, telephone 404/488-4613 of FTS 236-4613.

Dated: November 8, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-27467 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-18-M

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 8:30 a.m.-5 p.m., December 5, 1991.

Place: CDC, Auditorium A, 1600 Clifton Road NE., Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

Matters To Be Discussed: The Committee will listen to presentations on the statistical rationale developed for analysis of pilot study findings and use of ultrasound in other studies. Status reports and discussions from the Fred Hutchinson Cancer Research Center staff on the progress of Birth Rosters and Sampling; Tracing; Clinics; Native American involvement; and Computer Assisted Telephone Interviews will be presented.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road NE., (F-28), Atlanta, GA 30333, telephone 404/488-4613 or FTS 236-4612.

Dated: November 8, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-27468 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-18-M

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8 a.m.-5 p.m., December 5-6, 1991.

Place: Holiday Inn Decatur Conference Plaza, Decatur Ballroom, 130 Clairemont Avenue, Decatur, GA 30030.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Shortages of antituberculosis drugs; future tuberculosis research and new drug development; drug-resistant tuberculosis; recommendations for tuberculosis prevention and control in migrant farm workers; recommendations for tuberculosis prevention and control in the homeless; and the Council Progress Report. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Elimination, and Executive Secretary, ACET, National Center for Prevention Services, CDC, 1600 Clifton Road NE, Mailstop E-10, Atlanta, GA 30333, telephone 404/639-2501 or FTS 236-2501.

Dated: November 8, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-27469 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-18-M

Administration for Children and Families

Advisory Panel for the Evaluation of the Job Opportunities and Basic Skills Training (JOBS) Program; Meeting

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Panel for the Evaluation of the Job Opportunities and Basic Skills Training (JOBS) program. The purpose of the Panel is to help design, implement, and monitor a series of implementation and evaluation studies to assess the methods and effects of the JOBS program initiated under the Family Support Act of 1988.

DATES AND TIMES: December 3, 1991, 9 a.m. to 5 p.m. and December 4, 1991, 9 a.m. to 4 p.m.

PLACE: Hubert H. Humphrey Building, 200 Independence Avenue, SW.,

Washington, DC 20201, room 405A/425A.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Alan Yaffe, Administration for Children and Families/OPE, 370 L'Enfant Promenade SW. 20447; 202-401-4537.

SUPPLEMENTARY INFORMATION: This meeting will deal primarily with the design, implementation, and future direction of the JOBS evaluation being conducted jointly by the Administration for Children and Families and the Office of the Assistant Secretary for Planning and Evaluation. Specific topics to be discussed include the design of the implementation and process study, the development of JOBS performance standards, a study of adult education, and the implementation of JOBS evaluation demonstration in specific sites. Early findings from the Rockefeller Institute's study of JOBS implementation will also be presented.

Dated: November 8, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

[FR Doc. 91-27500 Filed 11-14-91; 8:45 am]

BILLING CODE 4150-04-M

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date:

Executive Committee Meeting, Sunday, December 8, 1991, 1 p.m.-5 p.m.
Full Committee Meeting, December 9-10, 1991, 9 a.m.-5 p.m.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating

to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with mental retardation.

Contact Person for More Information: Sambhu N. Banik, Ph.D., Wilbur J. Cohen Building, room 5325, 330 Independence Avenue, SW., Washington, DC 20201-0001, (202) 619-0634.

Dated: October 31, 1991.

James J. Colarusso,

Deputy Executive Director, PCMR.

[FR Doc. 91-27501 Filed 11-14-91; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

[Docket No. 89N-0432]

Par Pharmaceutical, Inc.; Withdrawal of Approval of Three Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDA's) for Orphengesic Tablets (Orphenadrine Citrate 25 milligrams (mg), Aspirin 385 mg, Caffeine 30 mg) (ANDA 71-642); Orphengesic Forte Tablets (Orphenadrine Citrate 50 mg, Aspirin 770 mg, Caffeine 60 mg) (ANDA 71-643); and Triamterene 75 mg and Hydrochlorothiazide 50 mg Tablets (ANDA 72-337) held Par Pharmaceutical, Inc. (Par), One Ram Ridge Rd., Spring Valley, NY 10977. FDA is withdrawing approval of these applications because they contain untrue statements of material fact, and the drugs covered by these applications lack substantial evidence of effectiveness. Par has withdrawn its request for a hearing on these products.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Christina Good, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of October 16, 1989 (54 FR 42367), FDA offered an opportunity for a hearing on a proposal to withdraw approval of ANDA's 71-642, Orphengesic Tablets (Orphenadrine Citrate 25 mg, Aspirin 385 mg, Caffeine 30 mg); ANDA 71-643,

Orphengesic Forte Tablets (Orphenadrine Citrate 50 mg, Aspirin 770 mg, Caffeine 60 mg); and ANDA 72-337, Triamterene 75 mg and Hydrochlorothiazide 50 mg Tablets held by Par. The basis for the proposal was that the applications contain untrue statements of material fact and that the drugs covered by the applications lack substantial evidence of effectiveness. In response to the notice, on November 15, 1989, Par submitted a request for a hearing. By letter dated October 21, 1991, Par withdrew its hearing request and consented to the entry of an order withdrawing approval of the applications.

The Director of the Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 5.82), finds that the applications listed above contain untrue statements of material fact (21 U.S.C. 355(e)(5)) and that, on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Therefore, pursuant to the foregoing finding, approval of ANDA's 71-642, 71-643, and 72-337, and all their amendments and supplements, is hereby withdrawn, effective November 15, 1991. Shipment in interstate commerce of the products listed above will then be unlawful.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to the withdrawal of approval of the products listed above. Notice is hereby given that the drugs covered by ANDA's 71-642, 71-643, and 72-337 will be removed from the list.

Dated: November 6, 1991.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 91-27553 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-039-N]

RIN 0938-AF39

Medicare Program; Inpatient Hospital Deductible and Hospital and Skilled Nursing Facility Coinsurance Amounts for 1992

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

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and skilled nursing facility coinsurance amounts for services furnished in calendar year 1992 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be \$652. The daily coinsurance amounts will be: (a) \$163 for the 61st through 90th days of hospitalization in a benefit period; (b) \$326 for lifetime reserve days; and (c) \$81.50 for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388. For case mix analysis only: Gregory J. Savord, (301) 966-6384.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary to determine and publish between September 1 and September 15 of each year the amount of the inpatient hospital deductible and the hospital and skilled nursing facility (SNF) coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 1992

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar

year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of \$4 (or, if midway between two multiples of \$4, to the next higher multiple of \$4).

For FY 1992, section 1886(b)(3)(B)(i)(VII) of the Act, as amended by section 4002 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted on November 5, 1990), provides that the applicable percentage increase for urban prospective payment system (PPS) hospitals is the market basket percentage increase minus 1.6 percent, and the applicable percentage increase for rural PPS hospitals is the market basket percentage increase minus 0.6 percent. Section 1886(b)(3)(B)(ii)(IV) provides that the applicable percentage increase for hospitals excluded from PPS is the market basket percentage increase. The market basket percentage increases for FY 1992 are 4.4 percent for PPS hospitals and 4.7 percent for hospitals excluded from PPS, as announced in the *Federal Register* on August 30, 1991 (56 FR 43196). Therefore, the percentage increases for Medicare prospective payment rates are 2.8 percent for urban hospitals and 3.8 percent for rural hospitals; the payment percentage increase for hospitals excluded from the PPS is 4.7 percent. Thus, weighting these percentages in accordance with payment volume, the Secretary's best estimate of the payment-weighted average of the increases in the payment rates for FY 1992 is 2.9859 percent. We recognize that Congress has frequently revised the payment rate increase provisions found in section 1886(b)(3)(B) of the Act during the budget reconciliation process, subsequent to the determination and promulgation of the deductible. Such revisions may occur this year as well and may affect the FY 1992 payment rate increase. However, at the time of this determination, we must use the payment rate increase specified in current law to determine the 1992 deductible.

To develop the adjustment for real case mix, an average case mix was first calculated for each hospital that reflects

the relative costliness of that hospital's mix of cases compared to that of other hospitals. We then computed the increase in average case mix for hospitals paid under the Medicare PPS in FY 1991 compared to FY 1990. (Hospitals excluded from the PPS were excluded from this calculation since their payments are based on reasonable costs and are affected only by real increases in case mix.) We used bills from prospective payment hospitals received in HCFA as of the end of July 1991. These bills represent a total of about 7.3 million discharges for FY 1991 and provide the most recent case mix data available at this time. Based on these bills, the increase in average case mix in FY 1991 is 1.73 percent.

Although average case mix has increased by 1.73 percent in FY 1991, section 1813 of the Act requires that the inpatient hospital deductible be increased only by that portion of the case mix increase that is determined to be real. We estimate that the increase in real case mix is about 1 percent. The increase in total case mix for FY 1991 is about the same as the increase for FY 1990. We expect that the real case mix percentage would be about the same as it was for FY 1990. Consequently, we will continue to use our estimate of 1 percent for the real case mix increase.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.9859 percent, and the real case mix adjustment factor for the deductible is 1 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 1992, is \$652. This deductible amount is determined by multiplying \$628 (the inpatient hospital deductible for 1991) by the payment rate increase of 1.029859 multiplied by the increase in real case mix of 1.01, which equals \$653.22 and is rounded to \$652.

III. Computing the Inpatient Hospital and Skilled Nursing Facility Coinsurance Amounts for 1992

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 1992, in accordance with the fixed percentage defined in the law, the daily coinsurance for the 61st through 90th days of hospitalization in a benefit period will be \$163 (1/4 of the inpatient hospital deductible); the daily

coinsurance for lifetime reserve days will be \$326 (1/2 of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th days of extended care services in a SNF in a benefit period will be \$81.50 (1/6 of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 1992 there will be about 8.3 million deductibles paid at \$652 each, about 3.2 million days subject to coinsurance at \$163 per day (for hospital days 61 through 90), about 1.3 million lifetime reserve days subject to coinsurance at \$326 per day, and about 12.5 million extended care days subject to coinsurance at \$81.50 per day. Similarly, we estimate that in 1991 there will be about 8.0 million deductibles paid at \$628 each, about 3.1 million days subject to coinsurance at \$157 per day (for hospital days 61 through 90), about 1.3 million lifetime reserve days subject to coinsurance at \$314 per day, and about 12.2 million extended care days subject to coinsurance at \$78.50 per day. Therefore, the estimated total increase in cost to beneficiaries is about \$500 million (rounded to the nearest \$10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

Authority. Section 1813(a)(3) and (b)(2) of the Social Security Act (42 U.S.C. 1395e(a)(3) and (b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 16, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 30, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-27502 Filed 11-14-91; 8:45 am]

BILLING CODE 4120-01-M

[OACT-038-N]

RIN 0938-AF38

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1992

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

ACTION: Notice.

SUMMARY: As required by section 1839 of the Social Security Act, this notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1992. It also announces the monthly SMI premium rate to be paid by all enrollees during calendar year 1992. The monthly actuarial rates for 1992 are \$60.80 for aged enrollees and \$80.80 for disabled enrollees. The monthly SMI premium rate for 1992 is \$31.80.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield (301) 966-6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal government.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the

expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92-603, enacted on October 30, 1972), the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II Social Security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, enacted on September 3, 1982) suspended this premium determination process. Section 124 of Pub. L. 97-248 changed the premium basis to 50 percent of the actuarial rates for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98-21, enacted on April 20, 1983), section 2302 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, enacted on July 18, 1984), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, enacted on April 7, 1986), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted on December 22, 1987), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 100-239, enacted on December 19, 1989) extended through 1990 the provision that the premium be based on 50 percent of the actuarial rates for aged enrollees. This extension expired at the end of 1990.

The premium rate for calendar years 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted on November 5, 1990). In January 1996, the premium determination basis will revert to the method established by Public Law 92-603, except that it will remain on a calendar year basis.

Section 1839(e)(1)(B)(ii) specifies that the premium rate for calendar year 1992 is \$31.80.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted on December 13, 1989) did not repeal the revisions to section 1839(f) made by Pub. L. 100-360.) Section 1839(f) now provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the total premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This occurs if the increase in the individual's Social Security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 203 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. (A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check in the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.) (This change, in effect, perpetuates former amendments that prohibited SMI premium increases from reducing an individual's benefits in years in which the dollar amount of the individual's cost-of-living increase in benefits was not at least as great as the dollar amount of the individual's SMI premium increase.)

Generally, if a beneficiary qualifies for this protection (in order to qualify, a beneficiary must have been in a current payment status for November and December of the previous year), the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits,

after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1939(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. That increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made or any rounding off under section 1839(c) of the Act is made.

For calendar year 1992, the monthly actuarial rates and the monthly premium rate are indicated below.

II. Notice of Monthly Actuarial Rates

As required by sections 1839(a) (1) and (4) of the Act, I have determined that the monthly actuarial rates applicable for calendar year 1992 are \$60.80 for enrollees age 65 and over, and \$80.80 for disabled enrollees under age 65. The accompanying statement (section IV.) gives the actuarial assumptions and bases from which these rates are derived.

III. Notice of Monthly Premium Rate

As required by sections 1839 (a)(3), (e)(1)(B)(ii) and (f) of the Act, I have determined that the monthly premium amount will be \$31.80 during calendar year 1992. However, for an individual whose monthly premium is deducted from his or her monthly Social Security benefit under sections 1840(a)(1) or 1840(b)(1) of the Act, the premium will remain at \$29.90 if monthly Social Security benefits are not increased for 1992. Also, if an individual's cost-of-living increase for 1992 to his or her monthly Social Security benefit is not as much as his or her increase in Part B premiums, the individual's Social Security benefits will not be decreased below his or her level of benefits for December 1991.

A new enrollee and any individual who does not have the monthly premium

deducted from his or her monthly Social Security benefit under section 1840(a)(1) or 1840(b)(1) of the Act will be required to pay the new premium amount regardless of whether monthly Social Security benefits are increased, or the individual's cost-of-living increase for 1992 is less than his or her increase in Part B premiums.

IV. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1992

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis; that is, the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund and used when needed.

The rates are established prospectively and are therefore subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period for which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1990 through 1991.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1990-DEC. 31, 1991

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1990.....	\$15,482	\$5,061	\$10,421
Dec. 31, 1991.....	17,933	5,798	12,135

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1992 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1992 and June 30, 1993, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July annual fee screen update used for benefits prior to the passage of section 2306(b) of Public Law 98-369. The values for the 12-month period ending June 30, 1989, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from January 1, 1989, through December 31, 1992, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1992 is \$66.99. The monthly actuarial rate of \$60.80 provides an adjustment of -\$2.08 for interest earnings and -\$4.11 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a negative contingency margin is needed to reduce assets toward a more appropriate level.

An appropriate level for assets depends on numerous factors. The most important of these factors are: (1) The difference from prior years in the actual performance of the program and estimates made at the time financing was established and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of the former as the trends in the differences vary over time.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projection for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1992 is \$80.01. The monthly actuarial rate of \$80.80 provides an adjustment of -\$0.80 for interest earnings and \$1.59 for a contingency margin. Based on current estimates, it appears that assets alone are not sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to build assets to more appropriate levels.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's physician fee schedule that is to be implemented beginning January 1, 1992 and by the program's economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values of the alternative assumptions were determined from a study on the average historical variation between actual and projected increases in the respective increase factors. All

assumptions not shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of \$9,221 million by the end of December 1992. This amounts to 15.1 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the

adequacy of the assets to accommodate projection errors) produce a surplus of \$4,863 million by the end of December 1992, which amounts to 7.1 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of \$13,371 million by the end of December, 1992, which amounts to 24.5 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

Section 4301 of Public Law 101-508 added section 1839(e)(1)(B)(ii) to the Act, which provides that the monthly premium rate for 1992, for both aged and disabled enrollees, is \$31.80.

Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1992

TABLE 2.—PROJECTION FACTORS¹ 12-MONTH PERIODS ENDING JUNE 30 OF 1989-1993

[In percent]

12-month period ending June 30	Physicians' services ²		Outpatient hospital services	Home health agency services ³	Group practice prepayment plans	Independent lab services
	Fees ³	Residual ⁴				
Aged:						
1989	1.5	5.1	11.6	-0.6	17.5	16.1
1990	0.9	6.9	9.6	85.0	17.8	19.2
1991	-1.9	11.0	6.7	11.0	20.2	19.3
1992	-1.3	9.7	12.5	9.4	17.0	19.3
1993	1.2	6.5	14.7	9.9	16.9	20.1
Disabled:						
1989	1.5	2.5	3.5	0.0	15.8	10.3
1990	0.9	4.3	15.1	0.0	18.4	17.1
1991	-1.9	10.5	7.1	0.0	18.1	16.1
1992	-1.3	6.9	7.7	0.0	10.9	14.0
1993	1.2	5.2	11.5	0.0	13.1	17.1

¹ All values are per enrollee.

² The fee and residual values do not include the impacts of the resource based relative value scale (RBRVS) fee schedule which will be effective January 1, 1992. While the RBRVS fee schedule has an impact on both the fee and residual values, the impacts are offsetting producing no net impact.

³ As recognized for payment under the program.

⁴ Increase in the number of services received per enrollee and greater relative use of more expensive services.

⁵ Since July 1, 1981, home health agency services have been almost exclusively provided by the Medicare hospital insurance (HI) program. However, for those SMI enrollee not entitled to HI, the coverage of these services is provided by the SMI program. Since all SMI disabled enrollees are entitled to HI, their coverage of these services is provided by the HI program.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1989 THROUGH DECEMBER 31, 1992

	Financing periods			
	CY 1989	CY 1990	CY 1991	CY 1992
Covered services (at level recognized):				
Physicians' reasonable charges	\$45.21	\$49.03	\$53.26	\$57.34
Outpatient hospital and other institutions	12.01	12.98	14.24	16.18
Home health agencies	0.09	0.13	0.14	0.15
Group practice prepayment plans	4.34	5.17	6.13	7.16
Independent lab	1.68	2.00	2.39	2.86
Total services	\$63.33	\$69.31	\$76.16	\$83.69
Cost-sharing:				
Deductible	-2.72	-3.03	-3.41	-3.38
Coinsurance	-11.94	-13.15	-14.03	-15.24
Total benefits	\$48.67	\$53.13	\$58.72	\$64.97
Administrative expenses	1.96	1.90	1.94	2.02
Incurred expenditures	\$50.63	\$55.03	\$60.66	\$66.99
Value of interest	-1.14	-1.81	-2.15	-2.08
Contingency margin for projection error and to amortize the surplus or deficit	6.31	3.98	4.09	-4.11
Monthly actuarial rate	\$55.80	\$57.20	\$62.60	\$60.80

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1989 THROUGH DECEMBER 31, 1992

	Financing periods			
	CY 1989	CY 1990	CY 1991	CY 1992
Covered services (at level recognized):				
Physicians' reasonable charges	\$48.60	\$52.25	\$56.28	\$59.93

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1989 THROUGH DECEMBER 31, 1992—Continued

	Financing periods			
	CY 1989	CY 1990	CY 1991	CY 1992
Outpatient hospital and other institutions	27.22	29.93	32.34	34.68
Home health agencies	0.00	0.00	0.00	0.00
Group practice prepayment plans	1.52	1.80	2.05	2.29
Independent lab	1.75	2.01	2.28	2.60
Total services	\$79.09	\$85.99	\$92.95	\$99.50
Cost-sharing:				
Deductible	-2.44	-2.73	-3.11	-3.21
Coinsurance	-15.22	-16.64	-17.61	-18.69
Total benefits	\$61.43	\$66.62	\$72.23	\$77.60
Administrative expenses	2.47	2.39	2.39	2.41
Incurred expenditures	\$63.90	\$69.01	\$74.62	\$80.01
Value of interest	-6.35	-3.86	-1.54	-0.80
Contingency margin for projection error and to amortize the surplus or deficit	-23.25	-21.05	-17.08	1.59
Monthly actuarial rate	\$34.30	\$44.10	\$56.00	\$80.80

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1992

	This projection (12-month period ending June 30)			Low cost projection (12-month period ending June 30)			High cost projection (12-month period ending June 30)		
	1991	1992	1993	1991	1992	1993	1991	1992	1993
Projection factors (in percent):									
Physician fees ¹ :									
Aged	-1.9	-1.3	1.2	-2.7	-2.3	-0.7	-1.1	-0.2	3.0
Disabled	-1.9	-1.3	1.2	-2.7	-2.3	-0.7	-1.1	-0.2	3.0
Utilization of physician services ²									
Aged	11.0	9.7	6.5	9.5	5.9	2.6	12.5	13.5	10.4
Disabled	10.5	6.9	5.2	7.8	3.6	3.0	13.2	10.3	7.5
Outpatient hospital services per enrollee									
Aged	6.7	12.5	14.7	2.2	9.8	10.4	11.2	15.2	19.0
Disabled	7.1	7.7	11.5	0.9	1.1	8.7	13.3	14.4	14.4
Actuarial status (in millions):									
Assets	\$15,482	\$17,933	\$15,518	\$15,482	\$20,455	\$17,727	\$15,482	\$15,274	\$13,186
Liabilities	5,061	5,798	6,297	3,639	4,170	4,356	6,506	7,465	8,323
Assets less liabilities	\$10,421	\$12,135	\$9,221	\$11,843	\$16,285	\$13,371	\$8,976	\$7,809	\$4,863
Ratio of assets less liabilities to expenditures (in percent) ³	21.2	22.1	15.1	25.5	32.6	24.5	17.3	12.9	7.1

¹ As recognized for payment under the program.² Increase in the number of services received per enrollee and greater relative use of more expensive services.³ Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

V. Cost to Beneficiaries

The monthly SMI premium rate of \$31.80 for all enrollees during calendar year 1992 is 6.4 percent higher than the \$29.90 monthly premium amount for the previous financing period. The estimated cost of this increase over the current premium to the approximately 34 million SMI enrollees will be about \$765 million for calendar year 1992.

VI. Regulatory Impact Statement

This notice merely announces amounts required by section 1839 of the

Social Security Act. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: October 6, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 30, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-27503 Filed 11-14-91; 8:45 am]

BILLING CODE 4120-01-M

[OACT-037-N]

RIN 0938-AF37

Medicare Program; Part A Premium for 1992 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

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

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for calendar year 1992 under Medicare's hospital insurance program (Part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 1992 for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Medicare Part A is \$192. Section 1818(d) of the Social Security Act specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT:
Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, enacted on December 19, 1989) added section 1818A to the Act, which provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These individuals are those not now entitled but who have been entitled under section 226(b) of the Act, continue to have the disabling impairment upon which their entitlement was based, and whose entitlement ended solely because the individuals had earnings that exceeded the substantial gainful activity amount (as defined in section 223(d)(4) of the Act).

Section 1818(d)(2) of the Act, as amended by section 103 of the Medicare

Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988), requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly premium for the following calendar year for persons who voluntarily enroll in Medicare Part A.

Section 1818(d) of the Act, as amended by section 103 of Public Law 100-360, requires the Secretary to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Medicare Part A. The Secretary must then, during September of each year, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and publish the dollar amount to be applicable for the monthly premium in the succeeding year. If the premium is not a multiple of \$1, the premium is rounded to the nearest multiple of \$1 (or if it is a multiple of 50 cents but not of \$1, it is rounded to the next highest \$1). The 1991 premium under this method was \$177 and was effective January 1991. (See 55 FR 41603; October 12, 1990.)

II. Premium Amount for 1992

Under the authority of section 1818(d)(2) of the Act (42 U.S.C. 1395i-2(d)(2)), the Secretary has determined that the monthly Medicare Part A hospital insurance premium for the uninsured for the 12 months beginning January 1, 1992 is \$192.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly premium for the uninsured for 1992 is equal to the estimated monthly actuarial rate for 1992 rounded to the nearest multiple of \$1. The monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1992 for individuals age 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determine the premium rate.

The principal steps involved in projecting the future costs of the

hospital insurance program are (a) establishing the present cost of services provided to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Medicare Part A enrollment and projecting future enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1992 on (a) current historical data and (b) projection assumptions under current law from the Midsession Review of the President's Fiscal Year 1992 Budget. It is estimated that in calendar year 1992, 30,935 million people age 65 and over will be entitled to Medicare Part A benefits (without premium payment), and that these individuals will, in 1992, incur \$71.388 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is \$192.31 and the monthly premium is \$192.

IV. Costs to Beneficiaries

The 1992 Medicare Part A premium is about 8.5 percent higher than the \$177 monthly premium amount for the 12-month period beginning January 1, 1991.

We estimate that there will be, in calendar year 1992, approximately 220 thousand enrollees who are voluntarily enrolled in Medicare Part A by paying the premium, who do not otherwise meet the requirements for entitlement. The estimated cost of the increase in the premium to these enrollees will be about \$40 million. (As of January 1, 1991, there were approximately 130 thousand enrollees paying the premium. These are the latest complete data available to us on voluntary enrollment through payment of premium. However, as a result of section 6013 of the Public Law 101-239, "Buy-In Under Part A for Qualified Medicare Beneficiaries," we expect, based on preliminary data, that approximately 90 thousand individuals who do not otherwise meet the requirements for entitlement and who are not currently enrolled will be enrolling in Medicare Part A by premium payment (with payment of the premium being made by the States).) The estimated Federal share of the increased Medicaid cost of covering the estimated 200,000 Qualified Medicare Beneficiaries due to the increase in the premium is \$20.5 million. The estimated State share is \$15.5 million.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analysis are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

Authority: Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 20, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 10, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-27504 Filed 11-14-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement for Professional Nurse Traineeships

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 Professional Nurse Traineeships are being accepted under the authority of sections 830 (a) and (c), title VIII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. This authority expired on September 30, 1991.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 830(a)(1)(A) of the Public Health Service Act, as amended, authorizes Professional Nurse

Traineeship Grants to cover the costs of traineeships for nurses in masters' degree and doctoral degree programs in order to educate such nurses to:

(1) Serve in and prepare for practice as nurse practitioners;

(2) Serve in and prepare for practice as nurse administrators, nurse educators, and nurse researchers; or

(3) Serve in and prepare for practice in other professional nursing specialties determined by the Secretary to require advanced education.

Section 830(a)(1)(B) authorizes grants to public and private nonprofit schools of nursing and appropriate public and private nonprofit entities to cover the costs of traineeships to educate nurses to serve and prepare for practice as nurse midwives.

Section 830(c) authorizes grants to cover the costs of traineeships for students who are enrolled at least half-time in programs offering a master's degree in nursing and who agree to complete the degree requirements within the academic year in which the traineeship is received.

The FY 1992 period of Federal support will not exceed 1 year.

Eligible Applicants

To be eligible to receive support an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in professional nursing specialties, or a public or nonprofit private school of nursing or an appropriate nonprofit private entity which prepares registered nurses to practice as nurse midwives.

The nurse midwife program must be approved by the American College of Nurse Midwives.

Eligible Trainees

In order to qualify for traineeship support, an individual must:

(1) Be a United States citizen, noncitizen national, or foreign national who possesses a visa permitting permanent residence in the United States;

(2) Be currently licensed as a registered/professional nurse in a State; and

(3) Be enrolled full-time in a graduate course of study, or half-time in a school of nursing, pursuing a master's degree which would be completed within the academic year of support.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may

obtain a copy of Healthy People 2000 (Full 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).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service training programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The program(s) offered;

(b) The qualifications of the program director;

(c) The number of full-time registered nurse students enrolled in the program(s); and

(d) The number of projected half-time master's degree students who agree to complete the degree requirements within the academic year in which the traineeship is received.

Funding Determination

The Secretary shall give a funding preference to applications for nurse practitioner and nurse midwifery programs which conform to provisions codified at 42 CFR 57.2401-57.2410.

To determine the amount of the grant to be awarded to each approved professional nurse traineeship program, the Secretary will use a formula that includes provisions for full-time and half-time students and the funding preference for nurse practitioner and nurse midwifery programs.

Application Information

The application deadline date is January 10, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

For specific guidelines and information regarding these programs

contact: Mary S. Hill, R.N., Ph.D., Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6193.

Requests for application materials, questions regarding grants policy and business management aspects should be directed to: Ms. Sandra Bryant (A-11), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915.

Completed applications should be returned to the Grants Management office at the above address.

The standard application from PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 93.358 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR part 100).

Dated: October 1, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91-27471 Filed 11-14-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Advisory Committee to Director; Meeting

Notice is hereby given that a public hearing will be conducted by a subcommittee of the Advisory Committee to the Director, NIH, to receive input about the working document titled "Management of Research Costs: Indirect Costs." This document discusses historical precedents for current approaches in calculating indirect cost rates as well as alternative approaches for the reimbursement of indirect costs to colleges, universities, hospitals and non-profit research institutes. On or about November 25, 1991, copies of the document will be mailed, upon request, to heads of colleges, universities, hospitals and non-profit research

institutes as well as organizations representing these institutions. Copies may be obtained from Ms. Susan Shelton, Editorial Experts, Inc./NIH, 66 Canal Center Place, suite 200, Alexandria, Virginia 22314-1538, FAX: (703) 683-4915.

The hearing will be held on December 11, 1991, from 8:30 a.m. to recess in Building 38A, Lister Hill Auditorium, at the National Institutes of Health, Bethesda, Maryland. The purpose of the hearing will be to receive public testimony on the issues raised in the working document, particularly those surrounding the calculation of indirect cost rates and the reimbursement of indirect costs. Because of limited time and space, oral presentations will be permitted only by representatives of biomedical research organizations such as universities, colleges, medical schools or professional organizations representing the biomedical research community.

Any individual wishing to make a presentation at the public briefing should notify, in writing, Dr. Jay Moskowitz, National Institutes of Health, Building 1, room 103, 9000 Rockville Pike, Bethesda, Maryland 20892, by December 4, 1991. A one-page summary of their presentation should accompany the request. Each speaker will be limited to a maximum of three (3) minutes. The full text of all presentations as well as written testimony from individuals not making oral presentations should be available no later than the start of the hearing.

Additional information may be obtained by calling Dr. Moskowitz (301) 498-3152.

Dated: November 6, 1991.

Bernadine Healy,
Director, NIH.

[FR Doc. 91-27538 Filed 11-14-91; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute (NEI); Workshop

Notice is hereby given of a Workshop on Research, Development, and Clinical Utility of Excimer Laser Corneal Surgery on December 6, 1991, on the campus of the NIH, Building 31, A Wing, Conference Room 4 from 10 a.m. to 6 p.m. This workshop will be open to the public.

Following opening remarks by the Director, NEI, there will be a panel discussion of scientific presentations by researchers studying excimer laser corneal surgery. Attendance by the public will be limited to space available.

Dr. Lore' Anne McNicol, Chief, Anterior Segment Diseases Program, NEI, Building 31, room 6A48, NIH, Bethesda, Maryland 20892, (301) 496-5884, will provide a summary of the meeting, roster of panel members, and substantive program information upon request.

Dated: November 7, 1991.

Bernadine Healy,
Director, NIH.

[FR Doc. 91-27541 Filed 11-14-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Thursday, December 12, 1991, from 9 a.m. to 3 p.m., at the Pooks Hill Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: November 7, 1991.

Bernadine Healy,
Director, NIH.

[FR Doc. 91-27542 Filed 11-14-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, December 3, 1991, from 9 a.m. to 3 p.m., at the Holiday-Inn Bethesda Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814, (301) 652-2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol

Education Program. Attendance by the public will be limited to space available. For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: November 7, 1991.

Bernadine Healy,
Director, NIH.

[FR Doc. 91-27539 Filed 11-14-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, December 10, 1991, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814 (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mary McDonald, Coordinator, of the National Heart Attack Alert Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496-0554.

Dated: November 7, 1991.

Bernadine P. Healy,
Director, NIH.

[FR Doc. 91-27540 Filed 11-14-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration
[Docket No. N-91-3344]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the

proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1991.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Multifamily Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection is comprised of basic application packages for HUD insurance of multifamily projects, hospitals, nursing homes, etc., under a variety of programs. HUD needs and uses this information to insure equity loans to owners of certain low income projects.

Form Number: HUD-92013, 92013-NHICF, 92013 HOSP. and 92013 Supplement.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-92013	400		1		64		25,600
HUD-92013-NHICF and HOSP.	150		1		64		9,600
Affirmative Marketing Plan	550		1		2		1,100
SRO Special Exhibits (A-D)	50		1		40		2,000
SRO Relocation Exhibits (E)	25		1		60		1,500
HUD-92013, Sec. 202/811	1,150		1		1		1,150
HUD-92013, Sec. 241(f)	100		2		2		400
HUD-92013-Supp.	3,800		1 .....		.50		1,900

Total Estimated Burden Hours: 43,250.

Status: Reinstatement.

Contact: Jane Luton, HUD, (202) 708-2556, Genevieve Tucker, HUD, (202) 708-0283, Jennifer Main, OMB, (202) 395-6880.

Dated: November 7, 1991.

[FR Doc. 91-27557 Filed 11-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3345]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of

an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1991.

John T. Murphy,
Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supportive Housing Demonstration—Renewal Process.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The information is needed primarily to Assist HUD in determining whether existing programs receiving Transitional and Permanent Housing funds under the Supportive Housing Demonstration should receive renewal grants as stipulated in the National Affordable Housing Act of 1990 (Public Law 101-625).

Form Number: None.

Respondents: State or Local Governments, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Renewal Grant Form	215		1		30		6,450

Total Estimated Burden Hours: 6,450.

Status: New.

Contact: James N. Forsberg, HUD, (202) 708-4300, Jennifer Main, OMB, (202) 395-6880.

Dated: November 7, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supportive Housing

Demonstration Program (FR-2878) (Grantee Reports).

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The Grantee Annual Reports are needed by HUD to chart the accomplishments of the Transitional Housing and Permanent Housing components under the Supportive Housing Demonstration

Program (SHDP). HUD will use the information for program monitoring, program evaluation and to report to Congress on the overall progress of the SHDP.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Future Year Reporting.....	825		1		15		12,375
Grantee Annual Reporting.....	825		1		20		16,500
Recordkeeping	825		1		45		37,125

Total Estimated Burden Hours: 66,000.

Status: New

Contact: James N. Forsberg, HUD, (202) 708-4300, Jennifer Main, OMB, (202) 395-6880.

Dated: November 7, 1991.

[FR Doc. 91-27558 Filed 11-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3346]

Submission of Proposed Information Collection of OMB**AGENCY:** Office of Administration, HUD.
ACTION: Notice.**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed

forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatements, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1991.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB**Proposal:** Application for Approval as Direct Endorsement Mortgagee Underwriter/Mortgagee Certification.**Office:** Housing**Description of the Need for the Information and Its Proposed Use:** The HUD/FHA single family Direct Endorsement program permits mortgage lenders to underwrite applications for mortgage insurance and close mortgage loans without prior HUD review. Form HUD-54112 and HUD-54113 are used by the mortgagees certifying that the mortgage complies with statutory and regulatory requirements.**Form Number:** HUD-54112 and HUD-54113.**Respondents:** Businesses or Other For-Profit.**Frequency of Submission:** On Occasion.**Reporting Burden:**

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-54112	2,400		8.335		.333		6,667
HUD-54113	2,400		292		.083		58,333

Total Estimated Burden Hours: 65,000.**Status:** Reinstatement.**Contact:** Richard Harrington, HUD, (202) 708-2676, Jennifer Main, OMB, (202) 395-6880.

Dated: November 7, 1991.

[FR Doc. 91-27559 Filed 11-14-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-52]

Federal Property Suitable as Facilities to Assist the Homeless**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Notice.**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by

HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplusFederal property. This Notice is also published in order to comply with the December 12, 1988 Court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any

such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF-MIIR, Washington, DC 20332-5000; (202) 767-6235; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg., Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338. (These are not toll-free numbers.)

Dated: November 8, 1991.
Anna Kondratas,
Assistant Secretary for Community Planning and Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/15/91

Suitable/Available Properties

Buildings (by State)

California

Hawes Site (KHGM)

March AFB

Hinckley Co: San Bernardino CA 92402-

Landholding Agency: Air Force

Property Number: 189010084

Status: Unutilized

Comment: 9290 sq ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldgs. 604, 605, 612, 611, 613-618

Point Arena Air Force Station

Mendocino County, CA 95468-5000

Landholding Agency: Air Force

Property Numbers: 189010237-189010246

Status: Unutilized

Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

Bldg. 21180

Vandenberg Air Force Base

Vandenberg AFB Co: Santa Barbara CA 93437-

Location: Hwy 1, Hwy 246, Coast Rd., PT Sal Rd., Miguelito CYN

Landholding Agency: Air Force

Property Number: 189130384

Status: Unutilized

Comment: 7487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab.

Guam

Anderson VOR

In the municipality of Dededo

Dededo Co: Guam GU 96912-

Location: Access is through Route 1 and Route 3, Marine Drive.

Landholding Agency: Air Force

Property Number: 189010267

Status: Unutilized

Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex

In the municipality Dededo

Dededo Co: Guam GU 96912-

Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.

Landholding Agency: Air Force

Property Number: 189010268

Status: Unutilized

Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4

Anderson Family Housing

Municipality of Dededo

Dededo Co: Guam GU 96912-

Location: Access is through Route 1, Marine Drive.

Landholding Agency: Air Force

Property Number: 189010545

Status: Underutilized

Comment: Various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion) (AJKZ)

Municipality of Dededo

Dededo Co: Guam GU 96912-

Location: Approx. 12 miles southwest of Anderson AFB proper.

Landholding Agency: Air Force

Property Number: 189120234

Status: Unutilized

Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121

Mountain Home Air Force Base

Main Avenue

Elmore County, ID 83648-

Landholding Agency: Air Force

Property Number: 189030007

Status: Excess

Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Barksdale Radio Beacon Annex

Curtis Co: Bossier LA 71111-

Location: 7 miles south of Bossier City on highway 71 south; left 1 1/4 miles on highway C1552.

Landholding Agency: Air Force

Property Number: 189010269

Status: Unutilized

Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Bldg. 21

Calumet Air Force Station

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010776

Status: Excess

Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22

Calumet Air Force Station

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010777

Status: Excess

Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30

Calumet Air Force Station

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010779

Status: Excess

Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40

Calumet Air Force Station

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010780

Status: Excess
 Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010781
 Status: Excess
 Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010782
 Status: Excess
 Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010783
 Status: Excess
 Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010784
 Status: Excess
 Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010785
 Status: Excess
 Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010786
 Status: Excess
 Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010787
 Status: Excess
 Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010788
 Status: Excess

Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010789
 Status: Excess
 Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010790
 Status: Excess
 Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldgs. 51-62
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010791-189010802
 Status: Excess
 Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63-67
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010803-189010807
 Status: Excess
 Comment: 1306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010808
 Status: Excess
 Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010809
 Status: Excess
 Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72-89
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010811-189010823
 Status: Excess
 Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010829
 Status: Excess
 Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010830
 Status: Excess
 Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010833
 Status: Excess
 Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010834
 Status: Excess
 Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldgs. 9-13
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010835-189010839
 Status: Excess
 Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5-8
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010840-189010843
 Status: Excess
 Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010844
 Status: Excess
 Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010845
 Status: Excess
 Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Number: 189010846
 Status: Excess
 Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.

Bldgs. 216-224, 212, 214
 Calumet Air Force Station
 Calumet Co: Keweenaw MI 49913-
 Landholding Agency: Air Force
 Property Numbers: 189010847-189010855,
 189010859, 189010861
 Status: Excess

Comment: 780 sq. ft. each; 1 story wood frame housing garages.	Property Number: 189010887 Status: Excess Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.	Bldg. 141 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Number: 189110122 Status: Excess Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.
Bldg. 215 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010856 Status: Excess Comment: 390 sq. ft.; 1 story wood frame housing garage.	Bldg. 157 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010888 Status: Excess Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.	Bldgs. 142-145 Fortuna Air Force Base Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110123-189110126 Status: Excess Comment: 624 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.
Bldg. 158 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010857 Status: Excess Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.	North Dakota	Bldgs. 201-218 Fortuna Air Force Base Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110127-189110144 Status: Excess Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.
Bldg. 15 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010864 Status: Excess Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.	Bldg. 101 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.	Bldgs. 221-229 Fortuna Air Force Base Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110145-189110153 Status: Excess Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.
Bldg. 23 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010865 Status: Excess Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.	Landholding Agency: Air Force Property Number: 189110095 Status: Excess Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.	Nevada
Bldg. 24 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010866 Status: Excess Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.	Bldgs. 102-106 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110096-189110100 Status: Excess Comment: 988 sq. ft. each; 3 bedroom single family housing units; needs rehab; off-site use only.	Bldgs. 300-302 Nellis Air Force Base Indian Springs AF Aux. Field Indian Springs Co: Clark NV 89018— Landholding Agency: Air Force Property Numbers: 189120001-189120003 Status: Unutilized Comment: 1573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 31-35 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Numbers: 189010867-189010871 Status: Excess Comment: 36 sq. ft. each; 1 story; metal frame; prior use storage of fire hoses.	Bldgs. 107, 110-111 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110101-189110103 Status: Excess Comment: 768 sq. ft. each; 2 bedroom single family housing units; needs rehab; off-site use only.	Bldgs. 303-306 Nellis Air Force Base Indian Springs AF Aux. Field Indian Springs Co: Clark NV 89018— Landholding Agency: Air Force Property Numbers: 189120004-189120007 Status: Unutilized Comment: 2750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 36-37, 39, 201-207 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Numbers: 189010872-189010874, 189010879-189010885 Status: Excess Comment: 25 sq. ft. each; 1 floor metal frame; prior use storage of fire hoses.	Bldgs. 112-116, 123-129 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110104-189110108, 189110115-189110121 Status: Excess Comment: 1510 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.	Bldgs. 307-310, 318, 320-322 Nellis Air Force Base Indian Springs AF Aux. Field Indian Springs Co: Clark NV 89018— Landholding Agency: Air Force Property Numbers: 189120008-189120011, 189120019, 189120021-189120023 Status: Unutilized Comment: 2170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldg. 153 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force Property Number: 189010886 Status: Excess Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.	Bldgs. 117, 119-122 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Numbers: 189110109, 189110111-189110114 Status: Excess Comment: 1595 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.	Bldgs. 311-317, 319, 324-326 Nellis Air Force Base Indian Springs AF Aux. Field Indian Springs Co: Clark NV 89018— Landholding Agency: Air Force Property Numbers: 189120012-189120018, 189120020, 189120025-189120027 Status: Unutilized
Bldg. 154 Calumet Air Force Station Calumet Co: Keweenaw MI 49913— Landholding Agency: Air Force	Bldg. 118 Fortuna Air Force Station Fortuna Co: Divide ND 58844— Landholding Agency: Air Force Property Number: 189110110 Status: Excess Comment: 2295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.	

Comment: 2424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120024

Status: Unutilized

Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331-341, 343, 345-346, 348-353

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Numbers: 189120028-189120047

Status: Unutilized

Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120048

Status: Unutilized

Comment: 2464 sq. ft., one story, most recent use-maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120049

Status: Unutilized

Comment: 2570 sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120050

Status: Unutilized

Comment: 2376 sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120051

Status: Unutilized

Comment: 2605 sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off-site removal only.

Bldgs. 3027, 3029-3040

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Numbers: 189120052, 189120054-189120065

Status: Unutilized

Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028

Nellis Air Force Base

Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018-

Landholding Agency: Air Force

Property Number: 189120053

Status: Unutilized

Comment: 60 sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Texas

Bldg. 605

Brooks Air Force Base

San Antonio Co: Bexar TX 78235-

Landholding Agency: Air Force

Property Number: 189110090

Status: Utilized

Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.

Bldg. 696

Brooks Air Force Base

San Antonio Co: Bexar TX 78235-

Landholding Agency: Air Force

Property Number: 189110091

Status: Utilized

Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.

Bldg. 699

Brooks Air Force Base

San Antonio Co: Bexar TX 78235-

Landholding Agency: Air Force

Property Number: 189110094

Status: Utilized

Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

Land (by State)

California

60 ARG/DE

Travis ILS Outer Marker Annex

Rio-Dixon Road

Travis AFB Co: Solano CA 94535-5496

Location: State Highway 113

Landholding Agency: Air Force

Property Number: 189010189

Status: Excess

Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Guam

Annex 1

Andersen Communication

Dededo Co: Guam GU 96912-

Location: In the municipality of Dededo.

Landholding Agency: Air Force

Property Number: 189010427

Status: Underutilized

Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)

Andersen Petroleum Storage

Dededo Co: Guam GU 96912-

Location: In the municipality of Dededo.

Landholding Agency: Air Force

Property Number: 189010428

Status: Underutilized

Comment: 35 acres; subject to utilities easements.

Michigan

Calumet Air Force Station

Section 1, T57N, R31W

Houghton Township

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010862

Status: Excess

Comment: 34 acres; potential utilities.

Calumet Air Force Station

Section 31, T58N, R30W

Houghton Township

Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force

Property Number: 189010863

Status: Excess

Comment: 3.78 acres; potential utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 540

Vandenberg Air Force Base

Off Coast Road

Vandenberg AFB Co: Santa Barbara CA 93437-

Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.

Landholding Agency: Air Force

Property Number: 189010581

Status: Unutilized

Comment: 384 sq. ft.; 1 story concrete/sheet metal; needs rehab; most recent use—locomotive maintenance/supply building; potential use—storage.

Colorado

Sheep Mountain Ranch

Wild and Scenic River Area

NW of Boulder, CO and 12 mi west of Lyons Lyons Co: Larimer CO 80540

Landholding Agency: Agriculture

Property Number: 159130002

Status: Unutilized

Comment: 368 sq. ft., one story conventional frame, most recent use—recreational lodging, access limitations, offsite use only.

Florida

Bldg. 166, 168, 170, 172, 174, 176

Patrick Air Force Base

North Highway AIA

Cocoa Beach Co: Brevard FL 32925-

Landholding Agency: Air Force

Property Number: 189110154-189110159

Status: Unutilized

Comment: 2100 sq. ft.; 1 story concrete block residence; needs major repair; presence of asbestos.

Illinois

Bldg. 1380

Chanute Air Force Base

Rantoul Co: Champaign IL 61868-

Landholding Agency: Air Force

Property Number: 189010232

Status: Unutilized

Comment: 350 sq. ft.; one story wood frame; no utilities; structural deficiencies; used for training exercises (chemicals and explosives).

Bldg. 106

Chanute Air Force Base

Rantoul Co: Champaign IL 61868-

Landholding Agency: Air Force

Property Number: 189010255	Calumet Air Force Station	Status: Unutilized
Status: Unutilized	Calumet Co: Keweenaw MI 49913	Comment: 1285 sq. ft., wood shingles, one story, most recent use—residential, needs rehab
Comment: 2360 sq.ft.; 2 story wood; possible asbestos; most recent use—jail.	Landholding Agency: Air Force	Bldg. 697
Bldg. 1220	Property Number: 189010778	Brooks Air Force Base
Chanute Air Force Base	Status: Excess	San Antonio Co: Bexar TX 78235
Rantoul Co: Champaign IL 61868-	Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.	Landholding Agency: Air Force
Landholding Agency: Air Force	Missouri	Property Number: 189110092
Property Number: 189010259	Jefferson Barracks ANG Base	Status: Unutilized
Status: Unutilized	Missouri National Guard	Comment: 770 sq. ft., possible asbestos, most recent use—supply store, needs rehab.
Comment: 589 sq. ft.; 1 story concrete block; water pump house for swimming pool; potential utilities.	1 Grant Road	Bldg. 698
Bldg. 1221	St. Louis Co: St. Louis MO 63125-4118	Brooks Air Force Base
Chanute Air Force Base	Landholding Agency: Air Force	San Antonio Co: Bexar TX 78235
Rantoul Co: Champaign IL 61868-	Property Number: 189010081	Landholding Agency: Air Force
Landholding Agency: Air Force	Status: Underutilized	Property Number: 189110093
Property Number: 189010260	Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.	Status: Unutilized
Status: Unutilized	New Mexico	Comment: 5815 sq. ft., 1 story corrugated iron, possible asbestos, needs rehab, most recent use—recreation, workshop.
Comment: 2893 sq. ft.; 1 story concrete; bath house for swimming pool limited utilities; possible asbestos.	Bldg. 13 1606 ABW/DE	<i>Land (by State)</i>
Massachusetts	Kirtland AFB	California
5 Bldgs.	Wyoming Avenue	Norton Com. Facility Annex
Otis Air National Guard—Family Housing	Kirtland Co: Bernalillo NM 87117-5496	Norton AFB
Cape Cod	Landholding Agency: Air Force	Sixth and Central Streets
Co: Barnstable MA 02542-5000	Property Number: 189010072	Highland Co: San Bernardino CA 92409-5045
Landholding Agency: Air Force	Status: Unutilized	Landholding Agency: Air Force
Property Number: 189010260	Comment: 520 sq. ft., 1 story portable building, off-site use only.	Property Number: 189010194
189010647, 189010648	South Dakota	Status: Excess
Status: Unutilized	54 Bldgs.—Renel Heights	Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.
Comment: 8856 sq. ft. to 10423 sq. ft. each; wood/concrete frame; 6-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.	Ellsworth AFB Co: Pennington SD 57706	Camp Kohler Annex
91 Bldgs.	Location: Across from main gate turn off.	McClellan AFB
Otis Air National Guard—Family Housing	Landholding Agency: Air Force	Sacramento Co: Sacramento CA 95652-5000
Cape Cod	Property Number: 189010343-189010355,	Landholding Agency: Air Force
Co: Barnstable MA 02542-5001	189010386-189010426	Property Number: 189010045
Landholding Agency: Air Force	Status: Unutilized	Status: Unutilized
Property Number: 189010614-189010631,	Comment: 852 sq. ft. to 1652 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.	Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.
189010649-189010721	124 Bldgs.—Skyway	Florida
Status: Unutilized	Ellsworth AFB Co: Pennington SD 57706	Eglin AFB
Comment: 5904 sq. ft. to 9216 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.	Location: Between main gate turn off and school gate.	Mossy Head Co: Walton FL 32533-
15 Bldgs.	Landholding Agency: Air Force	Location: NW quadrant of Florida Highway 285 and I-10. Bounded on the North by Louisville RR near Mossy Head, Florida.
Otis Air National Guard—Family Housing	Property Number: 189010356-189010384,	Landholding Agency: Air Force
Cape Cod	189010760-189010774, 189030008-189030015,	Property Number: 189010134
Co: Barnstable MA 02542-5001	189040003-189040026, 189110033-189110080	Status: Excess
Landholding Agency: Air Force	Status: Unutilized	Comment: 50 acres; Parcel 9; previous buffer zone; potential utilities.
Property Number: 189010632-189010639,	Comment: 481 sq. ft. to 1256 sq. ft. each; 1 and 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.	Eglin AFB
189010640-189010646	Bldg. 1108, 1109, 1113, 1114	Mossy Head Co: Walton FL 32533
Status: Unutilized	Ellsworth Air Force Base	Location: NE quadrant of Florida Highway 285, I-10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Comment: 2952 sq. ft. to 3474 sq. ft. each; wood/concrete frame; 2-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.	Center Drive	Landholding Agency: Air Force
Michigan	Ellsworth AFB Co: Pennington SD 57706	Property Number: 189010135
Bldg. 20	Landholding Agency: Air Force	Status: Excess
Calumet Air Force Station	Property Number: 189010439-189010442	Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.
Calumet Co: Keweenaw MI 49913	Status: Unutilized	Eglin AFB
Landholding Agency: Air Force	Comment: 10303 sq. ft.; 2 story wood frame with basement; possible asbestos; secure facility with alternate access; potential utilities.	Mossy Head Co: Walton FL 32533
Property Number: 189010775	Texas	Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Status: Excess	Facility 237—Carswell AFB	Landholding Agency: Air Force
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.	301 Roaring Springs Road	Property Number: 189010136
Bldg. 28	Fort Worth Co: Tarrant TX 76127	Status: Excess
	Landholding Agency: Air Force	
	Property Number: 189120235	

Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.	Property Number: 189010320-189010329 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 103-105, 110, 114, 202, 204-205, 1001, 1015 Kotzebue Air Force Station 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010296-189010297 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 165, 150, 130 Sparrevohn Air Force Station 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010298-189010300 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 308 King Salmon Airport 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010301 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 1401 Galena Airport 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010302 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 11-230, 21-116, 34-616, 43-010, 63-320, 63-325 Elmendorf Air Force Base 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010303-189010308 Status: Unutilized Reason: Secured Area, Contamination Bldg. 103, 110, 112-115, 118, 1001, 1018, 1025, 1055 Ft. Yukon Air Force Station 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010309-189010319 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056 Cape Lisburne Air Force Station 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force	Property Number: 189010330-189010339 Status: Unutilized Reason: Secured Area, Isolated area, Not accessible by road, Contamination Bldg. 50 Cold Bay Air Force Station 21 CSG/DEER Elmendorf AFB Co: Anchorage AK 99506-5000 Landholding Agency: Air Force Property Number: 189010433 Status: Unutilized Reason: Other, Isolated area, Not accessible by road Comment: Isolated and remote; Arctic environment Alabama Bldg. 913, 927, 935, 936, 807, 1001, 1010, 1039, 1215 Maxwell AFB Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189010002-189010005, 189140010-189140014 Status: Unutilized Reason: Secured Area Bldg. 809, 861, 1011, 1022, 1042, 1052, 1060-1061 Gunter AFB Montgomery Co: Montgomery AL 36114- Landholding Agency: Air Force Property Number: 189010011-189010013, 189010015-189010016, 189010019-189010020, 189010022 Status: Underutilized Reason: Secured Area Bldg. 1435-1436, 1440-1441 Maxwell Air Force Base Mimosa Road Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189030220-189030223 Status: Unutilized Reason: Floodway, Secured Area Bldg. 830, 421, 426, 135, 206, 208, 420, 559-562, 818, 823 Gunter Air Force Base Montgomery Co: Montgomery AL 36114-5000 Landholding Agency: Air Force Property Number: 189040853-189040855, 189140001-189140009, 189140021 Status: Underutilized Reason: Secured Area Petrol OPS Bldg. Maxwell Air Force Base 1101 Chanute Street Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189110165 Status: Unutilized Reason: Secured Area Law Center Maxwell Air Force Base	519 10th Street Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189110166 Status: Unutilized Reason: Secured Area Bldg. 1011 Maxwell Air Force Base Dannelly Street Montgomery Co: Montgomery AL 36112-5000 Landholding Agency: Air Force Property Number: 189110167 Status: Unutilized Reason: Secured Area HQ Specified Bldg. Maxwell AFB 677 Third Street Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189120231 Status: Unutilized Reason: Secured Area Base Personnel Office Maxwell AFB 853 Second Street Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189120232 Status: Unutilized Reason: Secured Area Bldg. 932 932 3rd St. & Ave. D, West Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189130335 Status: Unutilized Reason: Secured Area Bldg. 8 8 Maxwell Blvd., East Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189130336 Status: Unutilized Reason: Secured Area Bldg. 712 Avenue "E" Gunter Air Force Base Montgomery Co: Montgomery AL 36114-5000 Landholding Agency: Air Force Property Number: 189130349 Status: Unutilized Reason: Secured Area Bldg. 1004 Reserves Forces Training Facility Maxwell Air Force Base Montgomery Co: Montgomery AL 36112- Location: 1004 Maxwell Blvd. & Kelly Street Landholding Agency: Air Force Property Number: 189130369 Status: Unutilized Reason: Secured Area, Within airport runway clear zone Bldg. 1006, Reproduction Plant 1006 Kelly Street Maxwell Air Force Base Montgomery Co: Montgomery AL 36112- Landholding Agency: Air Force Property Number: 189130370 Status: Unutilized Reason: Secured Area Bldg. 72, Storage Shed 72 Selfridge & Maxwell Blvd. Maxwell Air Force Base
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Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130371
Status: Unutilized
Reason: Secured Area
Bldg. 95, Storage Shed
95 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130372
Status: Unutilized
Reason: Secured Area
Bldg. 96, Storage Shed
96 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130373
Status: Unutilized
Reason: Secured Area
Bldg. 97, Storage Shed
97 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130374
Status: Unutilized
Reason: Secured Area
Bldg. 78, Maintenance Shop
78 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130375
Status: Unutilized
Reason: Secured Area
Bldg. 79, Warehouse
79 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130376
Status: Unutilized
Reason: Secured Area
Bldg. 82, Storage CV Facility
82 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130377
Status: Unutilized
Reason: Secured Area
Bldg. 83, Storage CV Facility
83 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130378
Status: Unutilized
Reason: Secured Area
Bldg. 88, Maintenance Shop
88 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130379
Status: Unutilized
Reason: Secured Area
Bldg. 90, Storage CV Facility
90 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force

Property Number: 189130380
Status: Unutilized
Reason: Secured Area
Bldg. 94, Storage CV Facility
94 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189130381
Status: Unutilized
Reason: Secured Area
Arizona
Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB Co: Maricopa AZ 85240-5000
Landholding Agency: Air Force
Property Number: 189040856
Status: Unutilized
Reason: Secured Area
California
Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518-
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone
Bldg. 392 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area
Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone,
Secured Area
Bldg. 152, 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010190-189010191
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area
Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area
Bldg. 707, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010193, 189010196-
189010197
Status: Excess
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or
explosive material
Bldg. 100-101, 116, 202
Point Arena Air Force Station
Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010233-189010236
Status: Unutilized
Reason: Secured Area
Bldg. 201-204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA
93437
Location: Highway 1, Highway 246, Coast
Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546-189010549
Status: Unutilized
Reason: Secured Area
Bldg. 1001-1010, 1015, 1022-1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB Co: Santa Barbara CA
93437
Landholding Agency: Air Force
Property Number: 189010550-189010563
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area
Bldg. 8008-8010
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB Co: Santa Barbara CA
93437
Landholding Agency: Air Force
Property Number: 189010564-189010566
Status: Unutilized
Reason: Secured Area
Bldg. 1100-1101, 1103-1107
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA
93437
Landholding Agency: Air Force
Property Number: 189010567-189010574
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area
Bldg. 13423-13424, 13511-13512
Vandenberg Air Force Base
K Street off Kansas
Vandenberg AFB Co: Santa Barbara CA
93437
Landholding Agency: Air Force
Property Number: 189010575-189010578
Status: Unutilized
Reason: Secured Area
Bldg. 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA
93437
Landholding Agency: Air Force
Property Number: 189010579, 189010580
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material, Secured Area

Bldg. 23102
 Vandenberg Air Force Base
 Vandenberg AFB Co: Santa Barbara CA
 93437
 Location: Highway 1 and Highway 246; Coast
 Road, Pt. Sal Rd; Miguelito Cyn
 Landholding Agency: Air Force
 Property Number: 189110082
 Status: Unutilized
 Reason: Secured Area
 Bldg. 1011-1014, 1016-1021, 1823
 Vandenberg Air Force Base
 Vandenberg AFB Co: Santa Barbara CA
 93437
 Location: Hwy 1, Hwy 246, Coast Road, PT
 Sal Rd., Miguelito CYN
 Landholding Agency: Air Force
 Property Number: 189130350-189130360
 Status: Unutilized
 Reason: Secured Area, Within 2000 ft. of
 flammable or explosive material
 Bldg. 5015
 Vandenberg Air Force Base
 Vandenberg AFB Co: Santa Barbara CA
 93437
 Location: Hwy 1, Hwy 246, Coast Road, PT
 Sal Rd., Miguelito CYN
 Landholding Agency: Air Force
 Property Number: 189130361
 Status: Excess
 Reason: Secured Area, Within 2000 ft. of
 flammable or explosive material, Within
 airport runway clear zone
 Bldg. 8006
 Vandenberg Air Force Base
 Vandenberg AFB Co: Santa Barbara CA
 93437
 Location: Hwy 1, Hwy 246, Coast Road, PT
 Sal Rd., Miguelito CYN
 Landholding Agency: Air Force
 Property Number: 189130362
 Status: Excess
 Reason: Secured Area
 Colorado
 Bldg. 24
 Buckley Air Nat'l Guard Base
 Aurora Co: Arapahoe CO 80011-9599
 Location: Demolished 7 Dec. 90.
 Landholding Agency: Air Force
 Property Number: 189010249
 Status: Unutilized
 Reason: Secured Area
 Bldg. 291
 Lowry Air Force Base
 Denver Co: Denver CO 80230-5000
 Location: South of 6th Avenue and east of
 Rosemary Court.
 Landholding Agency: Air Force
 Property Number: 189010250
 Status: Excess
 Reason: Secured Area
 Delaware
 Bldg. 1310, 230
 Dover Air Force Base
 436 ABG/DE
 Dover AFB Co: Kent DE 19902-
 Landholding Agency: Air Force
 Property Number: 189010727, 18914001/
 Status: Unutilized
 Reason: Secured Area
 Bldg. 1900, 1304
 436 CSG Dover AFB
 Dover Co: Kent DE 19902-5516
 Landholding Agency: Air Force

Property Number: 189120230, 189140018
 Status: Unutilized
 Reason: Within airport runway clear zone,
 Secured Area
 Florida
 Bldg. 42
 Eglin Air Force Base
 Eglin AFB Co: Okaloosa FL 32542-5000
 Landholding Agency: Air Force
 Property Number: 189110001
 Status: Unutilized
 Reason: Secured Area
 Bldg. 6058-6059
 Eglin Air Force Base
 AF Aux Field 6
 Eglin AFB Co: Okaloosa FL 32542-5000
 Landholding Agency: Air Force
 Property Number: 189110002-189110003
 Status: Unutilized
 Reason: Secured Area
 Bldg. 8501, 8505, 8507
 Eglin Air Force Base
 Site A-5
 Eglin AFB Co: Okaloosa FL 32542-5000
 Landholding Agency: Air Force
 Property Number: 189110005-189110006,
 189110008
 Status: Unutilized
 Reason: Floodway, Secured Area
 Bldg. 576
 Patrick Air Force Base
 6th Street and South Patrick Drive
 Cocoa Beach Co: Brevard FL 32925-
 Landholding Agency: Air Force
 Property Number: 189110160
 Status: Unutilized
 Reason: Floodway
 Bldg. 1635
 Patrick Air Force Base
 River Picnic Area/Skeet Range
 Cocoa Beach Co: Brevard FL 32925-
 Landholding Agency: Air Force
 Property Number: 189110161
 Status: Unutilized
 Reason: Secured Area
 Bldg. 902
 Tyndall Air Force Base
 Panama City Co: Bay FL 32403-5000
 Landholding Agency: Air Force
 Property Number: 189130348
 Status: Underutilized
 Reason: Secured Area
 Bldg. 566, 568-569, 571-572, 574
 Patrick Air Force Base
 Cocoa Beach Co: Brevard FL 32925
 Location: A Street
 Landholding Agency: Air Force
 Property Number: 189130363-189130368
 Status: Excess
 Reason: Secured Area, Within airport runway
 clear zone
 Idaho
 Bldg. 1012, 923
 Mountain Home Air Force Base
 7th Avenue
 Co: Elmore ID 83648-
 Landholding Agency: Air Force
 Property Number: 189030004-189030005
 Status: Excess
 Reason: Within 2000 ft. of flammable or
 explosive material
 Bldg. 604
 Mountain Home Air Force Base

Pine Street
 Co: Elmore ID 83648
 Landholding Agency: Air Force
 Property Number: 189030006
 Status: Excess
 Reason: Within 2000 ft. of flammable or
 explosive material
 Bldg. 229
 Mt. Home Air Force Base
 1st Avenue and A Street
 Mt. Home AFB Co: Elmore ID 83648-
 Landholding Agency: Air Force
 Property Number: 189040857
 Status: Unutilized
 Reason: Within 2000 ft. of flammable or
 explosive material, Within airport runway
 clear zone
 Illinois
 Bldg. 550
 Chanute Air Force Base
 Rantoul Co: Champaign IL 61868-
 Landholding Agency: Air Force
 Property Number: 189010227
 Status: Unutilized
 Reason: Other environmental
 Comment: Water treatment sewage building.
 Bldg. 551-552
 Chanute Air Force Base
 Rantoul Co: Champaign IL 61868-
 Landholding Agency: Air Force
 Property Number: 189010228-189010229
 Status: Unutilized
 Reason: Other environmental
 Comment: Waste treatment plant.
 Bldg. 556
 Chanute Air Force Base
 Rantoul Co: Champaign IL 61868-
 Landholding Agency: Air Force
 Property Number: 189010230
 Status: Unutilized
 Reason: Other environmental
 Comment: Sewage treatment building with
 pumps.
 Bldg. 964
 Chanute Air Force Base
 Rantoul Co: Champaign IL 61868-
 Landholding Agency: Air Force
 Property Number: 189010231
 Status: Unutilized
 Reason: Other environmental
 Comment: Waste treatment pump station.
 Bldg. 3191
 Scott Air Force Base
 East Drive 375/ABG/DE
 Scott AFB Co: St. Clair IL 62225-5001
 Landholding Agency: Air Force
 Property Number: 189010247
 Status: Unutilized
 Reason: Within airport runway clear zone,
 Secured Area
 Bldg. 3670, 503, 351, 869, 1401-1410, 865
 Scott Air Force Base
 Scott AFB Co: St. Clair IL 62225-5001
 Landholding Agency: Air Force
 Property Number: 189010248, 189010725,
 189110086-189110087, 189130337-18913034/
 Status: Unutilized
 Reason: Secured Area
 Indiana
 Bldg. 520, 309, 301
 Grissom Air Force Base
 Grissom Co: Miami IN 46971-
 Landholding Agency: Air Force

Property Number: 189010183-189010184, 189010186	Reason: Secured Area Bldg. 71 Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010810	Malmstrom AFB Flightline & Avenue G Malmstrom Co: Cascade MT 59402- Landholding Agency: Air Force Property Number: 189010817
Status: Underutilized Reason: Secured Area Bldg. 219, 307	Status: Excess Reason: Other Comment: sewage treatment and disposal facility. Bldg. 99-100	Status: Underutilized Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental Bldg. 621
Grissom Air Force Base Grissom AFB Co: Miami IN 46971-5000 Landholding Agency: Air Force Property Number: 189110084-189110085	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010831-189010832	1st Street & Avenue I Malmstrom Co: Cascade MT 59402- Landholding Agency: Air Force Property Number: 189010878
Status: Underutilized Reason: Within 2000 ft. of flammable or explosive material, Secured Area Bldg. 707	Status: Excess Reason: Other Comment: water well Bldg. 118, 120, 168	Status: Utilized Reason: Other environmental, Secured Area Comment: Friable asbestos Bldg. 1500, 1502
Parallel to NE-SW runway & alternate runway Grissom AFB Co: Miami IN 46971- Landholding Agency: Air Force Property Number: 189130334	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010875-189010876, 189010878	Malmstrom AFB Perimeter Road Malmstrom Co: Cascade MT 59402- Landholding Agency: Air Force Property Number: 189010079-189010080
Status: Utilized Reason: Within airport runway clear zone, Secured Area	Status: Excess Reason: Other Comment: Gasoline Station Bldg. 166	Status: Utilized Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Other environmental Bldg. 627, 677
Louisiana	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010877	Malmstrom Air Force Base Great Falls Co: Cascade MT 59402- Landholding Agency: Air Force Property Number: 189010722-189010723
Bldg. 3477	Status: Excess Reason: Other Comment: Pump lift station. Bldg. 69	Status: Utilized Reason: Secured Area, Other environmental Bldg. 1991
Barksdale Air Force Base Davis Avenue	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010889	Between Avenue G and H Malmstrom Co: Cascade MT 59405- Landholding Agency: Air Force Property Number: 189040057
Barksdale AFB Co: Bossier LA 71110-5000 Landholding Agency: Air Force Property Number: 189140015	Status: Excess Reason: Other Comment: Pump lift station. Bldg. 69	Status: Underutilized Reason: Secured Area, Other environmental Bldg. 4-5
Status: Unutilized Reason: Secured Area	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010889	North Carolina
Massachusetts	Status: Excess Reason: Other Comment: Sewer pump facility. Bldg. 2	Bldg. 187
Bldg. 1800, 1804, 1833	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010890	Pope Air Force Base 317 CSG/DE Reilly Road
Westover Air Force Base Chicopee Co: Hampden MA 01022- Landholding Agency: Air Force Property Number: 189010438, 189040001- 189040002	Status: Excess Reason: Other Comment: Pump lift station. Bldg. 69	Pope AFB Co: Cumberland NC 28308-5045
Status: Unutilized Reason: Secured Area	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010899	Landholding Agency: Air Force Property Number: 189010262
Maryland	Status: Excess Reason: Other Comment: Sewer pump facility. Bldg. 2	Status: Utilized Reason: Secured Area, Other environmental Bldg. 4230—Youth Center
Bldg. 4-5	Calumet Air Force Station Calumet Co: Keweenaw MI 49913- Landholding Agency: Air Force Property Number: 189010890	Cannon Ave.
Brandywine Storage Annex 1776 ABW/DE Brandywine Road, Route 381	Status: Excess Reason: Other Comment: Water pump station Missouri	Goldsboro Co: Wayne NC 27531-5005
Andrews AFB Co: Prince Georges MD 20613- Landholding Agency: Air Force Property Number: 189010261, 189010264	Bldg. 42, 45-47, 61	Landholding Agency: Air Force Property Number: 189120233
Status: Unutilized Reason: Secured Area	Jefferson Barracks ANG Base 1 Grant Road, Missouri National Guard St. Louis Co: St. Louis MO 63125- Landholding Agency: Air Force Property Number: 189010726, 189010728- 189010731	Status: Underutilized Reason: Secured Area
Bldg. 3427	Status: Utilized Reason: Secured Area	Bldg. 4230—Youth Center
Andrews Air Force Base 3427 Pennsylvania Avenue	Montana	Cannon Ave.
Andrews AFB Co: Prince Georges MD 20335- Landholding Agency: Air Force Property Number: 189140016	Bldg. 140	Goldsboro Co: Wayne NC 27531-5005
Status: Unutilized Reason: Secured Area	Malmstrom AFB Between Goddard Avenue & 2nd Street	Landholding Agency: Air Force Property Number: 189120233
Maine	Malmstrom Co: Cascade MT 59402- Landholding Agency: Air Force Property Number: 18901076	Status: Underutilized Reason: Secured Area
Bldg. 5200, 6200, 6100	Status: Utilized	Bldg. N. 459
Loring Air Force Base Limestone Co: Aroostook ME 04750- Landholding Agency: Air Force Property Number: 189010541-189010543	Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental	Pope Air Force Base Armistead Street
Status: Unutilized Reason: Secured Area	Bldg. 280	Pope AFB Co: Cumberland NC 28308-5045
Michigan		Landholding Agency: Air Force Property Number: 189140019
Bldg. 560, 5658, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670		Status: Utilized Reason: Secured Area
Selfridge Air National Guard Base Selfridge Co: Macomb MI 48045- Landholding Agency: Air Force Property Number: 189010522-189010533		North Dakota
Status: Unutilized		Bldg. 422

Property Number: 189010724	Puerto Rico	Location: West of Lubbock
Status: Underutilized	Bldg. 10	Landholding Agency: Air Force
Reason: Secured Area	Punta Salinas Radar Site	Property Number: 189010210
New Hampshire	Toa Baja Co: Toa Baja PR 00759-	Status: Excess
Bldg. 132, 317, 343, 439	Landholding Agency: Air Force	Reason: Secured Area
Pease Air Force Base	Property Number: 189010544	174 Bldgs.
Pease AFB Co: Rockingham NH 03803-	Status: Underutilized	Carswell Air Force Base
Landholding Agency: Air Force	Reason: Secured Area	Fort Worth Co: Tarrant TX 76114-
Property Number: 189010536-189010539	South Dakota	Landholding Agency: Air Force
Status: Excess	176 Bldgs., Renel Heights	Property Number: 189030043-189030142,
Reason: Within 2000 ft. of flammable or	Ellsworth Air Force Base	189030144-189030173, 189030175-189030218
explosive material	Ellsworth AFB Co: Pennington SD 57706-	Status: Unutilized
New Mexico	Location: Across from main gate turn off.	Reason: Other
Bldg. 20330	Landholding Agency: Air Force	Comment: Extensive deterioration.
Kirtland Air Force Base	Property Number: 189010443-189010521,	Utah
1606 ABW/DEEVR	189010732-189010759, 189030016-189030032,	11 Bldgs.
Kirtland AFB Co: Bernalillo NM 87117-5498	189040027-189040058, 189040058,	Hill Air Force Base
Landholding Agency: Air Force	189110011-189110032	Co: Davis UT 84056-
Property Number: 189110083	Status: Unutilized	Landholding Agency: Air Force
Status: Unutilized	Reason: Other	Property Number: 189010275, 189010277,
Reason: Secured Area	Comment: Earth movement/shifting, cracked	189010279, 189010281, 189010283, 189010285,
Bldg. 831	exterior and interior walls with separations	189010287, 189010289, 189010291, 189010293,
833 CSG/DEER	several inches wide; earth shift severed	189010295
Holloman AFB Co: Otero NM 88330-	sewer lines.	Status: Unutilized
Landholding Agency: Air Force	101 Bldgs., Skyway	Reason: Secured Area
Property Number: 189130333	Ellsworth Air Force Base	Bldg. 788-790
Status: Unutilized	Ellsworth Co: Pennington SD 57706-	Hill Air Force Base
Reason: Secured Area	Landholding Agency: Air Force	Co: Davis UT 84056-
Bldg. 48013	Property Number: 189120066-189120166	Landholding Agency: Air Force
Kirtland Air Force Base	Status: Unutilized	Property Number: 189040858-189040860
Kirtland AFB Co: Bernalillo NM 87117-5498	Reason: Other	Status: Unutilized
Landholding Agency: Air Force	Comment: Extensive deterioration	Reason: Within airport runway clear zone,
Property Number: 189140020	220 Bldgs., Renel Heights	Secured Area
Status: Unutilized	Ellsworth Air Force Base	Washington
Reason: Secured Area	Ellsworth Co: Pennington SD 57706-	21 Bldgs.
New York	Landholding Agency: Air Force	Fairchild AFB
Bldg. 626 (Pin: RVKQ)	Property Number: 189120167-189120229,	Fairchild Co: Spokane WA 99011-
Niagara Falls International Airport	189130001, 189130003-189130157, 189130382	Landholding Agency: Air Force
914th Tactical Airlift Group	Status: Unutilized	Property Number: 189010139-189010159
Niagara Falls Co: Niagara NY 14303-5000	Reason: Other	Status: Unutilized
Landholding Agency: Air Force	Comment: Extensive deterioration	Reason: Secured Area
Property Number: 189010075	175 Bldgs., Skyway	Wyoming
Status: Unutilized	Ellsworth AFB Co: Pennington SD 57706-	Bldg. 31, 34, 37, 284, 385, 803
Reason: Within 2000 ft. of flammable or	Landholding Agency: Air Force	F. E. Warren Air Force Base
explosive material, Secured Area	Property Number: 189130158-189130331,	Cheyenne Co: Laramie WY 82005-
Ohio	189130383	Landholding Agency: Air Force
Facility 30205	Status: Unutilized	Property Number: 189010198-189010203
Wright-Patterson Air Force Base	Reason: Other	Status: Unutilized
Greene Co: Greene OH 45433-	Comment: Extensive deterioration	Reason: Secured Area
Landholding Agency: Air Force	Bldg. 8904	Land (by State)
Property Number: 189010434	Maintenance Work Center Unit	Alaska
Status: Unutilized	204 Harrison Terrace	Campion Air Force Station
Reason: Secured Area	Ellsworth AFB Co: Pennington SD 57706-	21 CSG/DEER
910 TAG	Landholding Agency: Air Force	Elmendorf AFB Co: Anchorage AK 99506-
Base Sewage Treatment Plant	Property Number: 189130332	5000
Vienna Co: Trumbull OH 44473-5000	Status: Unutilized	Landholding Agency: Air Force
Location: West of the 910 TAG Base on Ridge	Reason: Other	Property Number: 189010430
Road, Youngstown Municipal Airport	Comment: Extensive deterioration	Status: Unutilized
Landholding Agency: Air Force	Texas	Reason: Other, Isolated area. Not accessible
Property Number: 189110081	Bldg. 400	by road
Status: Excess	Laughlin Air Force Base	Comment: Isolated and remote area; Arctic
Reason: Other	Val Verde Co: Val Verde TX 78843-5000	environment
Comment: Sewage treatment plant.	Location: Six miles on Highway 90 east of Del	Lake Louise Recreation
Oklahoma	Rio, Texas.	21 CSG-DEER
Bldg. 604	Landholding Agency: Air Force	Elmendorf AFB Co: Anchorage AK 99506-
Vance Air Force Base	Property Number: 189010173	5000
Enid Co: Garfield OK 73705-5000	Status: Unutilized	Landholding Agency: Air Force
Landholding Agency: Air Force	Reason: Within 2000 ft. of flammable or	Property Number: 189010431
Property Number: 189010204	explosive material. Within airport runway	Status: Unutilized
Status: Unutilized	clear zone	Reason: Other, Isolated area, Not accessible
Reason: Secured Area, Within 2000 ft. of	Bldg. 645	by road
flammable or explosive material	Reese Air Force Base	
	Lubbock Co: Lubbock TX 79489-	

Comment: Isolated and remote area; Arctic coast.
 Nikolski Radio Relay Site
 21 CSG/DEER
 Elmendorf AFB Co: Anchorage AK 99506-5000
 Landholding Agency: Air Force
 Property Number: 189010432
 Status: Unutilized
 Reason: Other, Isolated area, Not accessible by road
 Comment: Isolated and remote area; Arctic coast.

Florida

Land
 MacDill Air Force Base
 6601 S. Manhattan Avenue
 Tampa Co: Hillsborough FL 33608-
 Landholding Agency: Air Force
 Property Number: 189030003
 Status: Excess
 Reason: Floodway

Maryland

Land
 Brandywine Storage Annex
 1776 ABW/DE Brandywine Road, Route 381
 Andrews AFB Co: Prince Georges MD 20613-
 Landholding Agency: Air Force
 Property Number: 189010263
 Status: Unutilized
 Reason: Secured Area

Virginia

Parcel 1 (Byrd Field)
 Richmond IAP
 5680 Beulah Road
 Richmond Co: Henrico VA 23150-
 Landholding Agency: Air Force
 Property Number: 189010435
 Status: Unutilized
 Reason: Floodway
 Parcel 3, (Byrd Field)
 Richmond IAP
 5680 Beulah Road
 Richmond Co: Henrico VA 23150-
 Landholding Agency: Air Force
 Property Number: 189010436
 Status: Unutilized
 Reason: Within 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
 Richmond IAP
 5680 Beulah Road
 Richmond Co: Henrico VA 23150-
 Landholding Agency: Air Force
 Property Number: 189010437
 Status: Unutilized
 Reason: Within 2000 ft. of flammable or explosive material, Secured Area

ANG Site

Camp Pendleton
 Virginia Air National Guard
 Virginia Beach Co: (See County) VA 23451-
 Landholding Agency: Air Force
 Property Number: 189010589
 Status: Unutilized
 Reason: Secured Area

Washington

Fairchild AFB
 SE corner of base
 Fairchild AFB Co: Spokane WA 99011-
 Landholding Agency: Air Force
 Property Number: 189010137
 Status: Unutilized

Reason: Secured Area
 Fairchild AFB
 Fairchild AFB Co: Spokane WA 99011-
 Location: NW corner of base
 Landholding Agency: Air Force
 Property Number: 189010138
 Status: Unutilized
 Reason: Secured Area
 [FR Doc. 91-27429 Filed 11-14-91; 8:45 am]
 BILLING CODE 4310-29-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement and Receipt of Two Permit Applications for Incidental Take on Least Bell's Vireo in Southwestern San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Association of Governments (SANDAG) has applied to the U.S. Fish and Wildlife Service (Service) for two incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permits would authorize, for a period of 30 years, the incidental take of an endangered species, the least Bell's vireo (*Vireo bellii pusillus*), in southwestern San Diego County, California, as outlined in the San Diego River Habitat Conservation Plan (HCP) and the Sweetwater River HCP. The proposed permits would also authorize incidental take of the coastal California gnatcatcher (*Polioptila californica californica*), a species proposed for listing as endangered under the Act, should this species become listed. The gnatcatcher occurs on Rancho San Diego property, contiguous with a portion of the Sweetwater River. The Service intends to prepare a joint Federal Environmental Impact Statement (EIS) and State Environmental Impact Report (EIR) addressing the proposed action to issue these incidental take permits. This notice has been prepared pursuant to Section 10(c) of the Act and the National Environmental Policy Act and its implementing regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR.

DATES: A public scoping meeting will be held in the main conference room of the San Diego City Hall, 202 C Street, in the Terrace Room on the Concourse between City Hall and the Parking Structure, San Diego, California, on Tuesday, November 19, 1991, at 7 p.m.

Interested parties are encouraged to attend the meeting to identify and discuss major issues and alternatives that should be addressed in the EIS/EIR. The proposed agenda for the scoping meeting includes presentations on the status of and threats to the species, a summary of the proposed action including mitigation measures, and a discussion of tentative issues, concerns, opportunities, and alternatives. There will be an opportunity for the public to present formal statements, and a

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Paperwork Reduction Project (1032-0118), Washington, DC 20503, telephone 202-395-7340.

Title: Flotation Plant Information.
OMB approval number: 1032-0118

Abstract: Respondents supply the Bureau of Mines with flotation information that supplements data obtained from production surveys and mine and quarry data. The data fill a gap in metallurgical data and supply metallurgical guidance for both Government and industry technical personnel. The results establish trends, particularly with respect to efficient processing of ores that are growing progressively lower in grade and more refractory to treat.

Bureau form number: 6-1172-X.

Frequency: Every 5 years.

Description of respondents: Producers with flotation operations.

Annual responses: 450.

Annual burden hours: 585.

Bureau clearance officer: Alice J. Wissman (202) 634-1125.

Dated: November 6, 1991.

Michael J. McKinley,

Chief, Division of Statistics and Information Services.

[FR Doc. 91-27438 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-58-M

question and answer session. Written comments on scoping from all interested parties will be accepted at the address listed below until December 12, 1991. Those persons providing oral presentations at the scoping meeting are requested to provide a written copy of their statement to Service representatives.

Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than debate, the significant issues related to the proposed action. Additional public meetings, if requested, will be held on later dates in order to provide opportunities to comment on the draft document.

Written comments concerning the permit applications, including the HCP's, should be submitted on or before 30 days from the date of this notice to the address listed below. Please reference permit numbers PRT-763555 (San Diego River HCP) and PRT-76556 (Sweetwater River HCP).

ADDRESSES: Information, comments, or questions concerning this notice should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Southern California Field Station, 24000 Avila Road, Laguna Niguel, California 92656.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (714/643-4270 or FTS 796-4270).

SUPPLEMENTARY INFORMATION:

SANDAG proposes to incidentally take least Bell's vireos on the San Diego and Sweetwater Rivers in association with various proposed public and private projects. The area covered by both proposed permits encompasses proposed critical habitat for the vireo. Issuance of the permits, as currently proposed, would allow the take of 101 acres of vireo habitat on the San Diego River and 84 acres of vireo habitat on the Sweetwater River.

Under the proposed HCP for the San Diego River, this loss would not only be offset, but a net gain of 155 acres of vireo habitat would occur through mitigation actions. Approximately 474 acres of riparian woodland would be conserved and managed for the benefit of the vireo, 317 acres of other riparian habitat would be protected, and 128 acres of land would be reclaimed for riparian habitat. A total of 937 acres of potentially reclaimable land would be subject to a project review process established under the HCP.

Under the proposed HCP for the Sweetwater River, the loss of vireo habitat would not only be offset, but a net gain of 26 to 140 acres would occur through mitigation actions. Under this

plan, approximately 821 acres of riparian woodland would be conserved and managed for the benefit of the vireo and 33 acres of other riparian habitat would be protected. A total of 1,398 acres of potentially reclaimable land would be subject to a project review process established under the HCP.

The proposed take of the coastal California gnatcatcher involves the loss of 428 acres of coastal sage scrub vegetation and selective clearing or thinning of 59 additional acres in association with future development of the Rancho San Diego project. A total of 939 acres of coastal sage scrub would be preserved under the proposed Sweetwater HCP, including 75 acres retained as mitigation for a subdivision built in 1988 to 1989.

The proposed HCP's provide for the institutional arrangement, funding mechanisms, and legal agreements to implement each conservation program. After incorporating the HCP's into their land use plans and policies, local agencies would approve the issuance of land development permits, subsequent to California Environmental Quality Act-mandated review of potential impacts to other environmental resources, for otherwise lawful public and private projects in specified portions of the San Diego River and Sweetwater River watersheds during the 30-year period in which the proposed Federal permit is in effect. Compliance with section 404 of the Federal Clean Water Act and section 7 of the Endangered Species Act may also be required for individual projects to lawfully proceed.

Funding for the HCP's will be secured through a combination of assessments, fees, contributions, mitigation fees, and public grants. A trust fund will be established to meet minimum annual operating requirements and long-term management of conserved habitat. Individual projects will be assessed fees based upon the anticipated impacts of each project.

Potential alternatives that would meet the underlying need include the issuance of incidental take permits for the San Diego and Sweetwater Rivers, for either river only, for both species, or for only one species. A "No Action" alternative (denial of the permit request) will also be discussed.

A tentative list of subjects to be addressed in the joint document has been developed. The EIS/EIR will include a discussion of the potential effect, by alternative, of the proposed action in relation to the following topics: least Bell's vireo; coastal California gnatcatcher; other biological resources; hydrology; residential development;

agricultural activities; commercial/industrial development; sand and gravel extraction; recreational facilities; transportation projects; and socioeconomic.

Dated: November 8, 1991.

Margaret Tieger,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 91-27462 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AK-967-4230-15; AA-6984-C]

Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Klawock-Heenya Corporation for approximately 40 acres. The lands involved are in the vicinity of Klawock, Alaska.

Copper River Meridian, Alaska

T. 72 S., R. 81 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 16, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 91-27470 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-JA-M

[WY-930-01-4111-08]

Bis Piney-LaBarge Coordinated Activity Plan; Availability**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of availability of the environmental assessment decision record and approved coordinated activity plan for Big Piney-LaBarge.

SUMMARY: The Wyoming State Director of the Bureau of Land Management (BLM) has issued the decision record and the approved Big Piney-LaBarge Coordinated Activity Plan (CAP). The decision record and CAP describe the BLM decisions for managing the Big Piney-LaBarge CAP area. The decision is based on the environmental assessment (EA) for the Big Piney-LaBarge CAP, distributed December 11, 1990, and on comments received from Federal, State, and County governments, industry, special interest groups, and individuals.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information or copies of the decision record and CAP by contacting Bill Daniels, Chief, Branch of Planning and Environmental Coordination, Bureau of Land Management, Wyoming State Office (WY-934), P.O. Box 1828, Cheyenne, Wyoming 82003, telephone (307) 775-6105, or Arlan Hiner, Pinedale Resource Area Manager, Bureau of Land Management, P.O. Box 768, Pinedale, Wyoming 82941, telephone (307) 367-4358.

DATES: As provided by 43 CFR 4.4, the BLM decision to approve the Big Piney-LaBarge CAP is subject to appeal. Parties wishing to do so must file their appeals in writing, within 30 days from the date of this publication in the *Federal Register*, with the State Director, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Appeals shall state clearly and concisely why it is thought the decision is in error.

SUPPLEMENTARY INFORMATION: The EA for the Big Piney-LaBarge CAP was prepared by the BLM and fulfills the requirements of the National Environmental Policy Act of 1969 (as amended). Since the approved CAP is in conformance with and within the scope of the planning and management decisions of the Pinedale Resource Management Plan (RMP), December 12, 1988, an amendment to the RMP is not needed.

The Big Piney-LaBarge CAP places emphasis on providing for two major concerns in the Big Piney-LaBarge area; (1) the ability to efficiently develop the

oil and gas resources, and (2) the stabilization and increase of vegetative quality and quantity for livestock grazing, wildlife, watershed and recreational uses, and for improved visual quality and reduced affects of surface disturbance. The CAP provides for vegetative treatments, improving reclamation efforts on disturbed areas, and protecting wildlife during critical life cycle periods.

An important part of the decision for managing the CAP area will be the use of a working group, called the Big Piney-LaBarge Working Group (BPLWG), which will review and encourage the continual planning for coordinated resource management in the area. The working group will not usurp or encroach upon the authorities or rights of any Federal or State agency, industry or any other governmental or private interests. Further details on the make-up, objectives and functions of this working group are presented in the EA decision record and in the Big Piney-LaBarge CAP.

Dated: November 7, 1991.

David J. Walter,

Acting State Director.

[FR Doc. 91-27485 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-22-M

[NV-030-92-4830-10-24-1 A]

Carson City District Advisory Council; Meeting**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of meeting of the Carson City District Advisory Council.**DATES:** December 12, 1991.**ADDRESSES:** 1535 Hot Springs Road, suite 300, Carson City, Nevada.**SUMMARY:** The Council will meet at 9:30 a.m. The agenda will include the following:

1. Minutes from the last meeting.
2. Council correspondence.
3. Current item update:
 - a. Truckee Meadows Project
 - b. Military—Nevada Report
 - c. FY 91 Law Enforcement Summary
 - d. Wild Horse and Burro Program (Carson City gathers)
 - e. Statewide Wilderness Package
4. At 10:30 a.m. comments from the public will be heard.
5. Council Recommendations.
6. Future Activities, Meeting Dates, Agenda Items.

FOR FURTHER INFORMATION CONTACT: Joan Sweetland, BLM Public Affairs Officer, 1535 Hot Springs Road, suite

300, Carson City, Nevada 89706-0638.
(Phone: (702) 885-6000)

Dated this 7th day of November 1991.

James W. Elliott,

District Manager Carson City District.

[FR Doc. 91-27514 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-HC-M

[NM-030-4212-11; NMNM 24624]

Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; New Mexico**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: This order terminates a Bureau of Land Management recreation and public purposes classification affecting 2.50 acres of public land near Derry, New Mexico. This land will be opened to the public land laws generally, including the mining laws. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Judith C. Waggoner, Bureau of Land Management, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005, 505-525-8228.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (43 FR 85), the classification decision of July 1, 1975, which classified 2.50 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), under Serial Number NMNM 24624, is hereby revoked. The land is described as follows:

New Mexico Principal Meridian

T. 17 S., R. 4 W.,

Sec. 30 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ (portion of lot 15).

The area described contains 2.50 acres in Sierra County.

2. At 9 a.m. on December 16, 1991, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 16, 1991, shall be considered.

as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 16, 1991, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 31, 1991.

Larry L. Woodard,
State Director.

[FR Doc. 91-27440 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-00-4212-13, CA 29191]

California, Exchange of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Calaveras County, California

T.5N., R.12E., MDM.

Sec. 19, E½NE¼, SE¼NW¼NE¼

90 acres

The above described land is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the *Federal Register*.

This land is difficult and uneconomic to manage as part of the public lands and is not considered suitable for management by another Federal agency.

The subject parcels will be used by the Bureau of Land Management in its exchange program to acquire wetlands in the Central Valley, California consistent with the North American

Waterfowl Management Plan, the Central Valley Habitat Joint Venture and BLM's Wildlife 2000 Program. Such a transfer through conservation groups like The Nature Conservancy, Ducks Unlimited, and Trust for Public Lands, would serve the public interest by protecting or creating additional wetlands, riparian areas, and other sensitive habitat.

ADDRESSES: For a period of 45 days from publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

FOR ADDITIONAL INFORMATION CONTACT: Dean Decker, (916) 985-4474, or at the address listed above.

SUPPLEMENTARY INFORMATION: The Federal lands will be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the Authority of the Act of August 20, 1890 (43 U.S.C. 945).

Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances including clearances for archaeology, rare plants and animals, will be completed prior to any conveyance of title by the U.S.

Dated: November 7, 1991.

D.K. Swickard,
Area Manager.

[FR Doc. 91-27488 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-40-M

[CO-930-2200-13; Colorado 45800]

Issuance of Conveyance Document and Opening of Land; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and opening order.

SUMMARY: This action serves to inform the public of the conveyance of 951.73 acres of public land out of Federal ownership in exchange for 640.00 acres of nonfederal land reconveyed to the United States. This notice will open all of the 640.00 acres of reconveyed lands to surface entry.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Senti, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076; (303) 239-3713.

EFFECTIVE DATE: November 15, 1991.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange of land between the United States and Everett Randleman. The Bureau of Land Management transferred title to the following described land

under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), with a reservation of all mineral deposits to the United States:

Sixth Principal Meridian, Colorado

T. 5 N., R. 81 W.,

Sec. 4, lots 3, 4, S½NW¼, N½SW¼, SE¼

SW¼ and W½SE¼;

Sec. 5, NE¼SE¼ and SE¼NW¼SE¼;

Sec. 7, lot 8;

Sec. 9, lots 2, 5, 6, 7, 10, 11, 12, and 14;

Sec. 17, lots 1, 2 and 8, containing 951.73

acres.

In exchange, the following described lands were reconveyed to the United States. No minerals in these lands were reconveyed to the United States.

Sixth Principal Meridian, Colorado

T. 7 N., R. 80 W.,

Sec. 27, E½SW¼, SW¼SW¼ and SE¼;

Sec. 28, SE¼;

Sec. 34, NW¼NE¼ and NW¼, containing

640.00 acres.

3. At 10 a.m. on December 19, 1991, the land described in T. 7 N., R. 80 W. will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 19, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public lands and acquisition of nonfederal land by the Federal Government. This exchange enabled the Bureau of Land Management to obtain lands needed for enhancement of wildlife habitat in connection with adjoining public lands in its Hebron Sloughs Wildlife Habitat Area in southern Jackson County, Colorado. The exchange was based on equal values of the properties exchanged. The public interest was well served by the completion of the exchange.

Dated: November 7, 1991.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 91-27486 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-JB-M

[MT-060-02-4212-14; MTM-80338]

Realty Action: Plan Amendment and Direct Sale; Phillips County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM) is providing notice of a plan amendment of the UL Bend and Zortman Management Framework Plan. The purpose of the amendment is to allow the sale of 10.18 acres of public land directly to Phillips County under criteria 3 of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713). The BLM is also providing notice of the proposed sale of the same public land in Phillips County involving the surface estate to the County.

SUMMARY: Phillips County will use the purchased land as a site for a solid waste container. The BLM advised state and local officials about the proposed sale. The estimated fair market value is \$350. Sale of the public land will occur in January, 1992.

The following described public land is suitable for sale under criteria 3 of section 203 of FLPMA of 1976 (43 U.S.C. 1713):

Principal Meridian Montana

T. 24 N., R. 30 E.,
Section 3, Lot 9.
Containing 10.18 acres.

DATES, COMMENTS AND PROTESTS: The effective date of this plan amendment decision and proposed sale notice is the publication date of this notice in the **Federal Register**.

Any person who participated in the UL Bend and Zortman Management Framework Plan amendment process having an interest or adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment as stated in 43 CFR 1610.5-2. The protest shall be in writing and filed within 30 days of the effective date of this notice. Send protests to the: Director (760), Bureau of Land Management, 1849 "C" Street NW, Washington, DC 20240.

The protest must contain:

1. The name, mailing address, telephone number and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the plan or amendment being protested.
4. A copy of all documents addressing the issue of issues submitted during the planning process by the protesting party or an indication of the discussion date of the issue(s) for the record.
5. A concise statement explaining why the State Director's decision may be wrong.

Comments on the proposed sale may occur for 45 days from the date of this

notice. Send comments to: Bureau of Land Management, Phillips Resource Area Office, Box B, Malta, Montana 59538-0047.

The State Director will weigh adverse comments on the proposed sale and may vacate or change this notice concerning the proposed sale. Without any objections this notice will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:

Information related to the plan amendment, proposed sale and environmental assessment are available from the Phillips Resource Area Manager at the above address.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from appropriation under the public land laws, including the mining laws but not from sale under section 203 of the FLPMA of 1976. The segregation will end upon issuance of the conveyance document or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance of public land is subject to:

1. A reservation of a right-of-way for ditches and canals under 43 U.S.C. 945.
2. A reservation of all federal minerals.
3. The following rights-of-way of record, Big Flat Electric Cooperative Incorporated (MTM-57527) and Triangle Telephone Cooperative Incorporated (MTM-42864).

Gary Slagel,
Acting District Manager.

[FR Doc. 91-27489 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-02-4212-14; N-54039]

Realty Action; Direct Sale of Federal Land in Nye County, NV

SUMMARY: The following described land has been examined and identified as suitable for disposal by direct sale to the Nevada Department of Transportation under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at the appraised fair market value:

Mount Diablo Meridian

T. 6 N., R. 51 E.,
sec.15, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

A parcel of land containing a total of 10.00 acres.

The proposed sale is a sale of a depleted portion of a gravel pit. The sale is consistent with the Bureau's planning system and in conformance with the

Tonopah Management Framework Plan, approved July 16, 1981. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register**.

Patent, when issued, will contain the following reservations to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Oil and gas together with the right to prospect for, mine, and remove the minerals. All other available mineral interests will be conveyed simultaneously in the patent.

Patent will be subject to all valid prior existing rights. The purchaser agrees that he takes the ten-acre parcel subject to the existing grazing use of Russell Ranches, holder of grazing authorization Number 6110. The privilege of Russell Ranches to graze domestic livestock on the ten-acre parcel according to the conditions and terms of authorization Number 6110 shall cease on February 28, 1993. The purchaser is entitled to receive annual grazing fees from Russell Ranches for the ten-acre parcel in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**.

That portion of the Nevada Department of Transportation's material site right-of-way CC-020746 which affects the subject land will have to be relinquished prior to sale.

GENERAL INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a notice of termination, or 270 days from the date of publication of this notice, whichever comes first.

The appraised fair market value of the 10.00 acre tract will be made available at a later date. Persons who wish to be notified when the appraisal is complete should contact the Battle Mountain District Office.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, NV 89820. Objections will be reviewed by the State Director who may

sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 30, 1991.

James D. Curivan,

District Manager, Battle Mountain District.

[FR Doc. 91-27448 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-HC-M

[INM-010-4111-08/G2-0100]

Albuquerque District, NM; Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Albuquerque District Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, Oil and Gas Leasing and Development.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, a Proposed Resources Management Plan Amendment and Final Environmental Impact Statement (PRMPA/FEIS) has been prepared for the Albuquerque District. This PRMPA/FEIS updates management constraints on and analyzes the environmental impacts of oil and gas leasing and development. It amends the previous RMPS prepared for the Farmington, Rio Puerco, and Taos Resources Areas. The total area administered by BLM Albuquerque District is 3,046,000 surface acres and 5,607,500 acres of oil and gas mineral (subsurface) estate. The District covers the following Northern New Mexico Counties: Bernalillo, Cibola, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Taos, Torrance, Union, and Valencia. The amendment is needed to comply with the requirement for identifying where needed, " * * * fluid mineral determinations * * * in every RMP regardless of whether or not fluid minerals is associated with a planning issue or management concern." The current management constraints or restrictions to oil and gas leasing and development in Special Management Areas (SMAs) are updated and modified (if necessary) in this document.

Additionally, areas are identified where (1) stipulations may be applied to new oil and gas leases, or (2) conditions of approval (COAs) may be attached to applications for permits to drill (APDs) on existing leases.

The primary purpose of the EIS is to analyze and document the impacts and cumulative impacts of reasonably foreseeable future actions resulting from

federally authorized fluid minerals activities.

Copies will be available for reference at the following libraries and a copy can be obtained at the BLM offices listed below.

College of Santa Fe Library Center, Farmington Public Library, Gallup Public Library, Bureau of Land Management, Farmington Resources Area Office, 1235 La Plata Highway, Farmington, New Mexico, Bureau of Land Management, Rio Puerco Resource Area Office, 435 Montano NE, Albuquerque, New Mexico, Bureau of Land Management, Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico.

DATES: The Plan is subject to protest using the procedures stated in CFR § 1610.5-2. The 30-day protest period begins when the EPA notice of availability is published in the **Federal Register**. Protests should be mailed to: Director, Bureau of Land Management, 1849 C Street NW., Washington, DC. Comments on the document can be submitted to the District Manager during this 30-day period. All comments received will be considered prior to issuing a Record of Decision.

ADDRESSES: Written comments other than protests should be addressed to: Robert T. Dale, District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, NM 87107.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, Team Leader, Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87017; phone (505) 761-8746.

SUPPLEMENTARY INFORMATION: The PRMPA/FEIS analyzes three alternatives to consider the following issues and established the fluid minerals determinations required in every RMP prepared by BLM.

1. Determine if additional federal mineral estate should be considered for oil and gas leasing.

2. Based on reasonable foreseeable development (RFD) scenarios, determine the effects of developing oil and gas leases in designated SMAs and other areas of concern.

3. Determine the impact of management constraints (lease stipulations, conditions of approval, and no leasing) on oil and gas development.

4. Identify the cumulative impacts of oil and gas development.

Public participation has occurred throughout the RMP process. A notice of intent was filed in the **Federal Register**, September 30, 1989. Since that time scoping meetings have been held, letters

have been sent to encourage public input, a draft has been published and distributed for review and comment, and public hearings have been held. All comments presented throughout the process have been considered.

Dated: November 7, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-27487 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-FB-M

[AK-932-4214-10; A/060160]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the legal description, based on an as-built survey conducted by the United States Army Corps of Engineers in 1988, on a portion of a transmission line associated with the Snettishman Power Project.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION:

1. The following described land represents the actual location of the transmission line that was previously described in Public Land Order No. 5108, Parcel No. 1, published in the **Federal Register**, 36 FR 16509, August 21, 1971:

Copper River Meridian

A parcel of land being a portion of U.S. Survey No. 1762, Juneau Townsite Elimination, within T. 42 S., R. 68 E., Cooper River Meridian, Juneau Recording District, First Judicial District, State of Alaska; said parcel being a portion of a 300.00 foot powerline right-of-way and being more particularly described as follows:

All locations, bearing and distances are in Universal Transverse Mercator Grid System (U.T.M.), Zone 1, State of Alaska; Thence, along the northwesterly boundary line of said survey, S. 45°47'34" W., 146.01 feet to a point on the northerly boundary line of said Right-of-Way and the Point of Beginning;

Thence, continuing S. 45°47'34" W., 301.93 feet to the southerly boundary line of said Right-of-Way;

Thence, along said boundary, N. 50°40'34" W., 211.00 feet;

Then, N. 63°34'19" W., 695.76 feet to a point on the northerly boundary line of Belvedere Mill Site, U.S.M.S. 72-B;

Thence, along said boundary, N. $44^{\circ}27'17''$ W., 78.32 feet to a point being N. $44^{\circ}27'17''$ W., 6.99 feet from corner No. 4 of Mexico Mill Site, U.S.M.S. 71-B; Thence, N. $45^{\circ}32'52''$ E., 305.53 feet; Thence, S. $44^{\circ}27'22''$ E., 43.77 feet; Thence, S. $53^{\circ}34'19''$ E., 662.29 feet; Thence, S. $50^{\circ}40'34''$ E., 278.85 feet to the Point of Beginning.

The parcel as described contains approximately 6.79 acres.

2. The terms and conditions of Public Land Order No. 5108 remain the same and the land described above remains withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C. Ch. 2) but no from leasing under the mineral leasing laws.

Dated: November 8, 1991.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR. Doc. 91-27490 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-932-4214-10; A-060160]

Amendment to Withdrawal Application; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: The United States Army Corps of Engineers has filed an amendment to their proposed withdrawal application of approximately 56.98 acres of public land. The proposed withdrawal was for the purpose of constructing, operating, and maintaining a power transmission line, associated with the Snettisham Power Project. The amended legal description is based on a 1988 as-built survey conducted by the Corps of Engineers on a portion of the transmission line.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION:

1. A Notice of Proposed Withdrawal and Reservation of Lands for a transmission line was published in the Federal Register, 42 FR 23210, May 6, 1977. The following described land represents the actual location of the transmission line based on an as-built survey:

Copper River Meridian

A strip of land located within U.S. Survey No. 1762, Juneau Townsite Elimination, T. 42 S., R. 68 E., Copper River Meridian, Juneau Recording District, First Judicial District, State of Alaska; said strip being 300.00 feet wide, lying 150.00 feet each side of the following described centerline:

All locations, bearings and distances are in Universal Transverse Mercator Grid System (U.T.M.), Zone 1, State of Alaska; Commencing at corner No. 3 of U.S. Survey No. 3269, said corner having U.T.M. Grid coordinates of N. 21,186,881.71 and E. 1,772,092.04;

Thence S. $40^{\circ}47'33''$ E., along that boundary line lying between corner No. 3 and corner No. 4 of said survey, for a distance of 1,719.20 feet, to a point of intersection with the centerline of an existing 300.00 foot wide transmission line Right-of-Way, said point being N. $40^{\circ}47'33''$ W., 163.04 feet from corner No. 4 of said survey;

Thence along said centerline S. $50^{\circ}40'34''$ E., 2,534.54 feet to tower T-56A, the Point of Beginning;

Thence continuing S. $43^{\circ}30'27''$ E., 5,171.60 feet to tower T-54D;

Thence S. $43^{\circ}26'21''$ E., 3,345.87 feet to the easterly boundary line of U.S. Survey No. 1762 and the terminus of this description.

The North and South lines of said strip are to be prolonged and shortened so as to terminate on the easterly boundary of U.S. Survey No. 1762;

Excluding the following described parcels:

Parcel 1: A parcel of land being a portion of U.S. Survey No. 4675, lying within protracted section 10, T. 42 S., R. 68 E., Copper River Meridian, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

All locations, bearings and distances are in Universal Transverse Mercator Grid System (U.T.M.), Zone 1, State of Alaska; Beginning at corner No. 1 of U.S. Survey No. 4675, said corner having U.T.M. Grid Coordinates of N. 21,177,763.04 and E. 1,781,006.19;

Thence N. $47^{\circ}03'47''$ W., along that boundary line lying between corner No. 1 and corner No. 20 of said survey, a distance of 1,413.97 feet to a point on the southerly Right-of-Way line as described above;

Thence S. $43^{\circ}26'21''$ E., along said Right-of-Way line, a distance of 1,328.21 feet to a point on the boundary line common to U.S. Survey No. 4675 and U.S. Survey No. 249;

Thence N. $89^{\circ}25'12''$ E., along said common boundary line, 121.93 feet to the Point of Beginning.

The parcel as described contains approximately 1.36 acres.

Parcel 2: A parcel of land being a portion of U.S. Survey No. 249 lying within protracted section 10, T. 42 S., R. 68 E., Copper River Meridian, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

All locations, bearings and distances are in Universal Transverse Mercator Grid System (U.T.M.), Zone 1, State of Alaska; Beginning at corner No. 2 of said U.S. Survey No. 249, which is also corner No. 1 of U.S. Survey No. 4675, said corner having U.T.M. Grid Coordinates of N. 21,177,763.04 and E. 1,781,006.19;

Thence S. $89^{\circ}25'12''$ W., along common boundary line of U.S. Survey No. 4675 and U.S. Survey No. 249, a distance of 121.93 feet;

Thence S. $43^{\circ}26'21''$ E., a distance of 179.28 feet to a point on the boundary line between corner No. 1 and corner No. 2 of U.S. Survey No. 249;

Thence N. $00^{\circ}35'14''$ W., along said boundary line, a distance of 131.41 feet to the Point of Beginning.

The parcel as described contains approximately .19 acre.

The strip of land described above, less the 2 excluded parcels, contains approximately 57.11 acres.

2. This Notice will not otherwise affect the terms of the original Notice of Proposed Withdrawal and Reservation of Lands and does not extend the segregation, which expired on October 21, 1991.

Dated: November 8, 1991.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91-27491 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-JA-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 November 2, 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 December 2, 1991.

Carol D. Shull,

Chief of Registration, National Register.

IOWA

Mahaska County

Forest Cemetery Entrance (Oskaloosa MPS).
Jct. of N. 9th St. and J Ave. E., Oskaloosa, 91001765

Gribbs, E. H., House (Oskaloosa MPS), William Penn College Campus, N. Market Extension, Oskaloosa, 91001761

Hoffman, Phil, House (Oskaloosa MPS), 807 High Ave. E., Oskaloosa, 91001760

Lincoln School (Oskaloosa MPS), 911 B Ave. W., Oskaloosa, 91001766

Oskaloosa City Hall (Oskaloosa MPS), Jct. of S. Market St., and 2nd Ave. E., NE corner, Oskaloosa, 91001764

Oskaloosa Fire Station (Oskaloosa MPS), 109-111 2nd Ave. E; Oskaloosa, 91001763
Paradise Block Historic District (Oskaloosa MPS), 402, 406, 408, 410, 414, 418 and 510-714 High Ave. E, Oskaloosa, 91001767
St. James Episcopal Church (Oskaloosa MPS), Jct. of 1st Ave. and S. 3rd St., SW corner, Oskaloosa, 91001762

KANSAS

Cowley County

West Dormitory—St. John's college, 1415 E. Sixth Ave., Winfield, 91001769

Marion County

Schroeder, J. S., Building, 111 N. Walnut St., Peabody, 91001770

MISSISSIPPI

Harrison County

French Warehouse Site, Gulf Islands National Seashore, Ocean Springs vicinity, 91001768

NEBRASKA

Douglas County

Eggerss—O'Flyng Building (Warehouses in Omaha MPS), 801 S. 15th St., Omaha, 91001759

Normandie Apartments, 1102 park Ave., Omaha, 91001758

NEW HAMPSHIRE

Grafton County

Sawyer—Medlicott House, Jct. of Bradford and River Rds., Piermont, 91001757
 [FR Doc. 91-27431 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 60; Amendment No. 8]

Rocky Mountain Motor Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Rocky Mountain Motor Tariff Bureau, Inc. (Rocky Mountain) has filed a petition seeking approval of an amendment to its ratemaking agreement approved under 49 U.S.C. 10706(b). The amendment would create the U.S./Mexico Rate Committee to simplify procedures involving traffic moving between points in the United States, on the one hand, and points in Mexico, on the other. The Commission has issued a decision proposing to approve the amendment, subject to public comment.

Copies of Rocky Mountain's approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (room 1227) of the Commission in

Washington, DC, and from Rocky Mountain's representative: Don R. Devine, 4045 Pecos Street, P.O. Box 5746, Denver, CO 80217.

DATES: Comments from interested persons are due December 16, 1991. Replies are due 15 days thereafter. If no timely adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 60 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representative.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Rocky Mountain's proposed amendment to create a rate bureau committee responsible for procedures governing international traffic between the United States and Mexico is similar in impact to other rate bureau amendments approved by the Commission involving international traffic between the United States and Canada. Section 5a Application No. 45, Niagara Frontier Tariff Bureau, Inc.—Agreement (not printed), served July 26, 1988, embracing Section 5a Application No. 60, Rocky Mountain Carriers—Agreement. The Commission has tentatively found the proposal here to be in the public interest for the same reasons involved in approval of the amendments involving Canadian traffic.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: November 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-27482 Filed 11-14-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting, Advisory Policy Board, National Crime Information Center

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 4-5, 1991, from 9 a.m. until 5 p.m. at the Casa Marina Marriott Resort, 1500 Reynolds Street, Key West, Florida 33040.

The topics to be discussed will include the progress of NCIC 2000 Phase II, the progress of the FBI Identification Division automation project, and other operational matters.

During the morning session on December 5, 1991, the discussion of the FBI Identification Division automation project will include the presentation of procurement sensitive information. Releasing this data in a public forum would provide an unfair advantage to a vendor having access to the material and then participating in a competitive procurement process to provide services to the FBI Identification Division. Due to the content of the discussions, that portion of the meeting will be closed to the public pursuant to 5 U.S.C. 552b, subsections (c)(4) and (c)(9)(B).

The remaining portion of the meeting will be open to the public with approximately 20 seats available for seating on a first-come, first-seated basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

Dated: November 5, 1991.

William S. Sessions,
Director.

[FR Doc. 91-27455 Filed 11-14-91; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR**Office of the Secretary****Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)**

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202 523-5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW, room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/

PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension**Employment and Training Administration****Internal Fraud Activities.**

1205-0187.

ETA 9000.

Annually.

State or local governments.

53 respondents; 424 total hours; 8 hrs. per response.

1 form.

ETA form 9000 is used by SESA, ETA, and OIG for identifying continuing activity involving internal fraud, and assessing fraud prevention effectiveness, resulting analysis will be communicated to SESAS to enhance management reports in controlling false representation and fraud. Negative trends could result in ETA requesting OIG audits(s).

Employment Standards Administration**Authorization for Release of Medical Information.**

1215-0057.

CM-936.

On occasion.

Individuals or households.

3,000 respondents; 250 total hours; 5 min. per response.

1 form.

This form is necessary to obtain minor medical information; incurred outside of Department jurisdiction. The Privacy Act prevents hospitals, clinics, and physicians from releasing this information without prior consent.

Application for a Farm Labor Contractor Employee Certificate of Registration.

1215-0037.

WH-512-MIS.

Annually.

Individuals or households; Farms; Businesses or other for-profit; Small Business or organizations.

2,200 respondents; 1,100 total hours; 1/2 hour per response.

1 form.

The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH-512-MIS is an application form which provides the Department of Labor

with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Signed at Washington DC this 7th day of November, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91-27506 Filed 11-14-91; 8:45 am]

BILLING CODE 4510-30-M

BILLING CODE 4510-27-M

Employment and Training Administration**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Akerman, Inc. IAMAW	Waukesha, WI	11/04/91	10/11/91	26,499	Hydraulic excavators and parts.
Anadrill/Schlumberge (workers)	Scott, LA	11/04/91	10/19/91	26,500	Oil drilling.
Atlas Cylinder/Parker Hannifin (workers)	Eugene, OR	11/04/91	10/14/91	26,501	Air and hydraulic cylinders.
B.J.'s Ceramics (workers)	Ashland, OH	11/04/91	10/22/91	26,502	Ceramic novelties.
Bigard Drillers, Inc. (workers)	Mt. Pleasant, MI	11/04/91	10/22/91	26,503	Oil and gas.
Carbonaire, Inc. (workers)	Palmetton, PA	11/04/91	10/20/91	26,504	Ammonia and carbon dioxide.
Coleman/Western Cutlery, Inc. (workers)	Longmont, CO	11/04/91	10/22/91	26,505	Pocket and hunting knives.
Detroit Steel Products Co., Inc. (workers)	Morristown, IN	11/04/91	10/03/91	26,506	Leaf springs for trucks.
Elenburg Exploration, Inc. (Company)	Casper, WY	11/04/91	10/25/91	26,507	Oil and gas drilling.
Elgin-Electronics (workers)	Erie, PA	11/04/91	10/25/91	26,508	Telephone assemblies.
Emerson Radio Corp. (CJA)	North Bergen, NJ	11/04/91	10/24/91	26,509	TV's, VCR, telephones, answer machines.
Emmese Investors Ltda. (workers)	Carlstadt, NJ	11/04/91	10/21/91	26,510	Electronic repair
Encore Shoe Corp. (workers)	Chase City, VA	11/04/91	10/24/91	26,511	Leather shoes.
Frigidaire Co.-Athens Range Products (IUE)	Athens, TN	11/04/91	10/23/91	26,512	Gas and electric ranges, wall ovens.
G.E. Astro Space Division (workers)	Princeton, NJ	11/04/91	10/22/91	26,513	Satellites.
Groshire Clothing, Inc. ACTWU	New York, NY	11/04/91	10/11/91	26,514	Coats and jackets.
Grossman Clothing, Inc. ACTWU	New York, NY	11/04/91	10/11/91	26,515	Coats and jackets.
H.H. Cutler Co., Distribution Dept. (Company)	Grand Rapids, MI	11/04/91	10/23/91	26,516	Infants and childrens clothing.
Harkins & Company (workers)	Alice, TX	11/04/91	10/23/91	26,517	Oil Drilling.
Harry Irwin ACTWU	New York, NY	11/04/91	10/11/91	26,518	Coats and jackets.
Leaf, Inc. (Company)	Chicago, IL	11/04/91	10/18/91	26,519	Milk duds candy.
Maine Mountain Footwear (workers)	Wilton, ME	11/04/91	10/21/91	26,520	Men's, women's sports shoes.
Mars Glove Co., Inc. (Company)	Lafayette, GA	11/04/91	10/23/91	26,521	Cotton work gloves.
Mitel, Inc. (workers)	Boca Raton, FL	11/04/91	10/22/91	26,522	Telecommunication on equipment.
North American Refractories Co. (USWA)	Womelsdorf, PA	11/04/91	10/23/91	26,523	Refractories, products.
Power Tongs, Inc. (Company)	Farmington, NM	11/04/91	10/24/91	26,524	Oil and gas drilling.
S&S Grindees (workers)	Canton, OH	11/04/91	09/30/91	26,525	Surfacing grinding and lathe bar tuning.
Spokane Lumber Co. (workers)	Tonasket, WA	11/04/91	10/23/91	26,526	Dimensional lumber.
West Point Pepperell/Stevens (workers)	Scottsboro, AL	11/04/91	10/21/91	26,527	Bath, kitchens, textile products.

[FR Doc. 91-27507 Filed 11-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,153]

General Electric Aerospace Defense Systems Department, Pittsfield, MA; Affirmative Determination Regarding Application for Reconsideration

On October 10, 1991 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on September 27 1991 and published in the Federal Register on October 9, 1991 (56 FR 50950).

The company with Congressional support claims that the sales information which they submitted was inaccurate for the time frame requested by the Department.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC., this 6th day of November 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-27508 Filed 11-14-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26, 279]

Owens-Brockway, Inc.; Freehold, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 3, 1991 in response to a worker petition which was filed on behalf of workers at Owens-Brockway, Inc., Freehold, New Jersey.

A negative determination applicable to the petitioning group of workers was issued on 10/25/91 (TA-W-26, 224). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of November, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-27509 Filed 11-14-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act.

The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the regulations set forth in title 29 of the Code of Federal Regulations, part 1,

§ 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by volume and are included immediately following the transmittal sheet(s) for the appropriate volume(s).

Volume II

Wage Decision No. TX90-9, Modification Nos. 1 through 2.

Volume III

Wage Decision No. AK90-1, Modification Nos. 8 through 9.

Wage Decision No. AK91-1, Modification Nos. 1 through 8.

Pursuant to the regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut, CT91-3 (Feb. 22, 1991) p. 78a, pp. 78b, 78d.

District of Columbia, DC91-2 (Feb. 22, 1991) p. 91, p. 82.

Florida, FL91-5 (Feb. 22, 1991) p. 113, p. 114.

Georgia, GA91-4 (Feb. 22, 1991) p. 229.

Kentucky:

KY91-5 (Feb. 22, 1991) p. 331, pp. 332-336.

KY91-25 (Feb. 22, 1991) p. All.

KY91-26 (Feb. 22, 1991) p. All.

KY91-27 (Feb. 22, 1991) p. All.

KY91-28 (Feb. 22, 1991) p. All.

Maryland:

MD91-4 (Feb. 22, 1991) p. 481, pp. 482-484.

MD91-5 (Feb. 22, 1991) p. 485.

MD91-25 (Feb. 22, 1991) p. All.

MD91-26 (Feb. 22, 1991) p. All.

Maine, ME91-3 (Feb. 22, 1991) p. 529, pp. 530-538b.

New York, NY91-17 (Feb. 22, 1991) p. 921, pp. 922-930.

Pennsylvania, PA91-3 (Feb. 22, 1991) p. 979, pp. 980-984.

Tennessee, TN91-11 (Feb. 22, 1991) p. 1215.

Virginia, VA91-48 (Feb. 22, 1991) p. 1353, p. 1354.

Volume II

Iowa:

IA91-5 (Feb. 22, 1991) p. 41, pp. 42-48.

IA91-10 (Feb. 22, 1991) p. All.

Illinois:

IL91-7 (Feb. 22, 1991) p. 137, p. 138.

IL91-8 (Feb. 22, 1991) p. 145, pp. 146-147.

Indiana:

IN91-3 (Feb. 22, 1991) p. 279, pp. 280, 282.

IN91-5 (Feb. 22, 1991) p. 305, pp. 306-308.

Michigan:

MI91-1 (Feb. 22, 1991) p. 441, pp. 444-448.

MI91-4 (Feb. 22, 1991) p. 491, pp. 492-493.

MI91-17 (Feb. 22, 1991) p. 559, p. 560.

Missouri, MO91-1 (Feb. 22, 1991) p. 651, p. 656.

Ohio:

OH91-1 (Feb. 22, 1991) p. 809, pp. 810-820b.

OH91-22 (Feb. 22, 1991) p. 903, pp. 904-942.

Volume III

Alaska, AK91-1 (Feb. 22, 1991) p. All.

Arizona, AZ91-1 (Feb. 22, 1991) p. All.

Colorado, CO91-5 (Feb. 22, 1991) p. 175, pp. 176-177.

Utah, UT91-19 (Feb. 22, 1991) p. All.

Washington, WA91-7 (Feb. 22, 1991) p. 501, p. 502.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume.

Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of November 1991.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 91-27398 Filed 11-14-91; 8:45 am]

BILLING CODE 4510-27

Mine Safety and Health Administration

Sunnyside Coal Co. et al.; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sunnyside Coal Company

[Docket No. M-91-89-C]

Sunnyside Coal Company, P.O. Box 99, Sunnyside, Utah 84539 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Sunnyside No. 1 Mine (I.D. No. 42-00093) located in Carbon County, Utah. The petitioner states that examining seals will result in a diminution of safety due to arches being installed for roof support.

2. Wyoming Fuel Company

[Docket No. M-91-90-C]

Wyoming Fuel Company, 10250 Highway 12, Weston, Colorado 81091 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Golden Eagle Mine (I.D. No. 05-02820) located in Las Animas County, Colorado. The petitioner proposes to use a single line of automatic water sprinklers for its fire protection system at the main and secondary belt conveyor drives.

3. Lion Mining Company

[Docket No. M-91-91-C]

Lion Mining Company, P.O. Box 209, Jennerstown, Pennsylvania 15547 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Grove No. 1 Mine (I.D. No. 36-02398) located in Somerset County, Pennsylvania. The petitioner proposes the use of intake air from belt haulage entries to ventilate active working places at the face, and to install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

4. Energy West Mining Company

[Docket No. M-91-92-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (electrical installations) to its Deer Creek Mine (I.D. No. 42-00121); and its Cottonwood Mine (I.D. No. 42-01944) both located in Emery County, Utah. The petitioner proposes to use two portable fire extinguishers, or one extinguisher with at least twice the minimum capacity of a portable fire extinguisher at temporary electrical installations instead of one extinguisher and 240 pounds of rock dust.

5. McElroy Coal Company

[Docket No. M-91-93-C]

McElroy Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petitioner proposes to enclose the electrical equipment in a fireproof structure instead of coursing air currents to the return.

6. Future Mining Company

[Docket No. M-91-94-C]

Future Mining Company, HC 73 Box 1610, Barboursville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-17126) located in Whitley County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets.

7. C & B Mining Company

[Docket No. M-91-95-C]

C & B Mining Company, RD 2, Box 861, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 2 Vein Slope (I.D. No. 36-07813) located in Northumberland County, Pennsylvania. The petitioner requests a modification to require the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any prior set of developing entries be 5,000 cfm, and reaching the intake end of a pillar line be 5,000 cfm.

8. LARC, Inc.

[Docket No. M-91-97-C]

LARC, Inc., 221 Riverside Drive, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mountaineer Mine (I.D. No. 46-06958) located in Mingo County, West Virginia. The petitioner proposes the use of intake air from belt haulage entries to ventilate active working places and to install a low-level carbon monoxide detection system in all belt entries utilized as intake aircourses.

9. The Ohio Valley Coal Company

[Docket No. M-91-98-C]

The Ohio Valley Coal Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petitioner proposes to enclose the electric equipment in a fireproof structure instead of coursing the air currents to the return.

10. Consolidation Coal Company

[Docket No. M-91-99-C]

Consolidation Coal Company, Consol Plaza Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Blacksville No. 1 Mine (I.D. No. 46-01867) located in Monongalia County, West Virginia. The petitioner proposes to enclose the electrical equipment in a fireproof structure instead of coursing air currents to the return.

11. Consol Pennsylvania Coal Company

[Docket No. M-91-100-C]

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petitioner proposes to use a high-voltage cable inby the last open crosscut to power a longwall shearing machine.

12. Consolidation Coal Company

[Docket No. M-91-101-C]

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Blacksville No. 2 Mine (I.D. No. 46-01968) located in Monongalia County, West Virginia. The petitioner proposes to use a high-voltage cable inby the last open crosscut to power a longwall shearing machine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 16, 1991. Copies of these petition are available for inspection at that address.

Dated: November 8, 1991.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-27510 Filed 11-14-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**Inter-Arts Advisory Panel; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Communities Section) to the National Council on the Arts will be held on December 6, 1991 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.-5:30 p.m. The topics will be guidelines review and policy discussion.

The remaining portion of this meeting from 9 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, this session will be closed to the public

pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

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: October 7, 1991.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 91-27497 Filed 11-14-91; 8:45 am]

BILLING CODE 7537-01-M

Opera-Musical Theatre Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works "B" Section) to the National Council on the Arts will be held on December 5-6, 1991 from 9 a.m.-9 p.m. and December 7 from 9 a.m.-6 p.m. in rooms M-07 and M-09 at the Nancy Hanks Center, 1100 Pennsylvania, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on December 5 from 9 a.m.-10 a.m. and December 7 from 4:15 p.m.-6 p.m. The topics will be introductions and orientation, and policy discussion.

The remaining portions of this meeting on December 5 from 10 a.m.-9 p.m., December 6 from 9 a.m.-9 p.m. and December 7 from 9 a.m.-6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public

pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to 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: November 7, 1991.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 91-27498 Filed 11-14-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals/LGIC Section) to the National Council on the Arts will be held on December 4, 1991, from 9 a.m.-5:30 p.m. and December 5 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be opening remarks, application review, ranking/recommendations and policy discussion.

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: October 7, 1991.

Yvonne M. Sabine,

*Director, Council and Panel Operations,
National Endowment for the Arts.*

[FR Doc. 91-27499 Filed 11-14-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Instrumentation and Instrument Development; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel Meeting for Instrumentation and Instrument Development.

Date and Time: Thursday, December 5, 1991 from 8:30-6, Friday, December 6, 1991 from 8:30-6.

Place: National Science Foundation, Conference and Training Center, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: John C. Wooley, Acting Program Director, Instrumentation and Instrument Development, room 312, National Science Foundation, Washington, DC 20550, Telephone: 202-357-9880.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research equipment.

Agenda: To review and evaluate research proposals as part of the selection process of 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 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: November 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-27441 Filed 11-14-91; 8:45 am]

BILLING CODE 7555-01-M

Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science. **Date/Time:** November 25, 1991, 8:30 a.m. to 6 p.m. November 26, 1991, 8:30 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed (except for discussion on Trends and Opportunities in

Political Science on November 26, 1991, 11 a.m.-12 which will be open).

Contact Person(s): Dr. Frank P. Scioli, Jr., Program Director, Political Science, National Science Foundation, 1800 G Street, NW., room 336, Washington, DC 20550, Telephone: 202/357-9406.

Purpose of Meeting: To provide advice and recommendation concerning research proposals in Political Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed contains 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 the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act, February 18, 1977.

Reasons for Late Notice: Announcement was misplaced.

Dated: November 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-27442 Filed 11-14-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Teacher Preparation and Enhancement; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations 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.

Name: Special Emphasis Panel in Teacher Preparation and Enhancement.

Dates & Times: December 5, 1991, 2:30 p.m.-9:30 p.m. December 6, 1991, 8 a.m.-6 p.m. December 7, 1991, 8 a.m.-2 p.m.

Location: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008, (202) 328-2000.

Type of Meeting: Closed.

Agenda: Review and evaluate Teacher Preparation and Enhancement proposals.

Contact Person: Dr. Janice Earle or Peirce Hammond, room 635B, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7751.

Dated: November 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-27443 Filed 11-14-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Teacher Preparation and Enhancement; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Teacher Preparation and Enhancement.

Dates: 8-10 December 1991.

Times: 8 December—2:30 p.m.-9:30 p.m.; 9 December—8 a.m. to 6 p.m.; 10 December—8 a.m. to Noon.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue NW., Washington, DC 20008, (202) 328-2000.

Meeting Rooms: Congressional Room, Embassy Room, Ethan Allen Room.

Type of Meeting: Closed.

Purpose: To review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals 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 Teacher Preparation Proposals.

Contact: Dr. Miriam Leiva or Dr. Larry Enochs, Teacher Preparation Program, Networking and Teacher Preparation Section, Division of Teacher Preparation and Enhancement, Directorate for Education and Human Resources, National Science Foundation, room 635B, Washington, DC 20550, (202) 357-7089.

Dated: November 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-27444 Filed 11-14-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-2 and NPF-8 issued to Alabama Power Company (the licensee) for operation of Joseph M. Farley Nuclear Plant, Units 1

and 2 (FNP), located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

By letter dated May 6, 1991, as supplemented by letters dated June 18, June 20, September 27, October 14, and October 22, 1991, Alabama Power Company proposed amendments that would authorize Southern Nuclear Operating Company, Inc. (Southern Nuclear), to become the operator of FNP. Southern Nuclear would be the exclusive operating licensee, to possess, manage, use, operate, and maintain FNP. Alabama Power Company would continue to be the owner of the facility. Southern Nuclear would have no entitlement to power output from FNP or authority to dispatch, broker, or market the energy generated. This authority would be retained by Alabama Power Company.

As described in the application, Alabama Power Company and Southern Nuclear are wholly owned subsidiaries of the Southern Company. Southern Nuclear was formed in December 1990 for the purpose of consolidating into a single organization personnel within the Southern System engaged in nuclear operations. Alabama Power Company stated that there would be no significant change in nuclear power or support organizations for FNP. The onsite nuclear generation organization currently responsible for the physical operation of FNP would be transferred intact to Southern Nuclear.

Need for the Proposed Action

The proposed changes are needed to reflect the addition of Southern Nuclear as the licensed operator for FNP. Southern Nuclear would have exclusive responsibility and control over the physical construction, operation and maintenance of the facility. The purpose of incorporating Southern Nuclear was to establish an organization which would consolidate personnel within the Southern Electric System engaged in nuclear operations into a single, integrated organization to pursue a higher degree of performance in multiple-unit nuclear operations.

Environmental Impacts of the Proposed Action

No changes resulting from the proposed amendments are anticipated in the on-site nuclear generation organization, except that all FNP employees of Alabama Power Company would become employees of Southern Nuclear and, where appropriate, titles would be changed to reflect the

exclusive operating status of Southern Nuclear. The off-site corporate organizations will continue to provide support and quality assurance organizations for FNP. Functional areas for the off-site FNP support group will include administrative, emergency planning, licensing, engineering, maintenance and outage support services. There will be no significant changes in the FNP nuclear organization.

Also, there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed license amendments. Accordingly, the Commission concluded that this proposed action would result in no radiological or nonradiological environmental impact.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impact of plant operations and would result in the Facility Operating Licenses and Technical Specifications not properly reflecting the organizational relationships between Alabama Power Company, Southern Nuclear and the FNP.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 6, 1991, as supplemented by letters dated June 18, June 20, September 27, October 14, and October 22, 1991, which are available for

public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 7th day of November 1991.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

*Acting Director Project Directorate II-1,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 91-27505 Filed 11-14-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leota M. Shelkey, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on October 16, 1991 (56 FR 51940). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1 and September 30, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1992.

Schedule A

No Schedule A authorities were established or revoked during September.

Schedule B

No Schedule B authorities were established or revoked during September.

Schedule C

Department of Agriculture

One Confidential Assistant to the Administrator, Farmers Home

Administration. Effective September 17, 1991.

One Confidential Assistant to the Director, Intergovernmental Affairs, Office of Public Affairs. Effective September 20, 1991.

One Confidential Assistant (Director, Legislative Affairs and Public Information Staff) to the Administrator, Farmers Home Administration. Effective September 20, 1991.

One Confidential Assistant (Rural Development Specialist) to the State Director, Texas, Farmers Home Administration. Effective September 23, 1991.

One Staff Assistant to the Administrator, Agricultural Marketing Service. Effective September 23, 1991.

Agency for International Development

One Public Affairs Specialist to the Chief, Public Liaison Division, Office of External Affairs. Effective September 19, 1991.

Department of the Army

One Secretary (Typing) to the Assistant Secretary (Civil Works). Effective September 20, 1991.

Commodity Futures Trading Commission

One Administrative Assistant to the Commissioner. Effective September 6, 1991.

One Special Assistant to the General Counsel. Effective September 13, 1991.

Department of Commerce

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective September 6, 1991.

One Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective September 20, 1991.

Department of Defense

One Secretary (Stenography) to the Deputy Assistant to the Vice President for National Security. Effective September 6, 1991.

One Director, Regional Security Strategies, East Asia, to the Assistant Deputy Under Secretary for Policy Planning. Effective September 19, 1991.

Department of Education

One Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective September 6, 1991.

One Confidential Assistant to the Deputy Secretary. Effective September 9, 1991.

One Confidential Assistant to the Director, Corporate Liaison Staff. Effective September 9, 1991.

One Special Assistant to the Director of Communications/Counselor to the Secretary. Effective September 13, 1991.

One Confidential Assistant to the Director of Communications/ Counselor to the Secretary. Effective September 17, 1991.

One Special Assistant to the Deputy Under Secretary for Management. Effective September 19, 1991.

One Special Assistant to the Special Advisor to the Secretary for America 2000. Effective September 20, 1991.

One Confidential Assistant to the Executive Assistant, Office of Postsecondary Education. Effective September 26, 1991.

Department of Energy

One Staff Assistant to the Director of the Executive Secretariat, Office of Administration and Human Resource Management. Effective September 13, 1991.

One Staff Assistant to the Deputy Assistant Secretary for International Affairs. Effective September 16, 1991.

One Staff Assistant to the Director, Office of Special Projects. Effective September 26, 1991.

One Staff Assistant to the Deputy Secretary. Effective September 26, 1991.

Environmental Protection Agency

One Staff Assistant to the Director, External Relations and Education Division, Office of Communications and Public Affairs. Effective September 13, 1991.

Department of Transportation

One Special Assistant to the Deputy Administrator, Urban Mass Transportation Administration. Effective September 13, 1991.

One Scheduling Assistant to the Special Assistant to the Secretary for Scheduling and Director of Advance Operations and Travel Coordination. Effective September 20, 1991.

Federal Emergency Management Agency

One Confidential Assistant to the Director, Congressional Affairs, External Affairs Directorate. Effective September 13, 1991.

Federal Maritime Commission

One Secretary (Typing) to the Chairman. Effective September 12, 1991.

Department of Health and Human Services

One Special Assistant (Speechwriting) to the Director of Speechwriting, Office

of the Assistant Secretary for Public Affairs. Effective September 6, 1991.

One Confidential Assistant to the Executive Secretary. Effective September 6, 1991.

One Confidential Staff Assistant to the Administrator, Health Care Financing Administration. Effective September 16, 1991.

Department of Housing and Urban Development

One Staff Assistant to the Special Assistant to the Secretary/Director of the Executive Secretariat. Effective September 6, 1991.

One Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective September 6, 1991.

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective September 20, 1991.

Department of the Interior

One Confidential Assistant to the Assistant Secretary—Territorial and International Affairs. Effective September 13, 1991.

One Special Assistant to the Director, Office of Surface Mining, Reclamation and Enforcement. Effective September 17, 1991.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective September 20, 1991.

Department of Justice

One Senior Liaison Officer to the Director, Office of Liaison Services. Effective September 13, 1991.

Department of Labor

One Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs. Effective September 6, 1991.

One Secretary's Representative (Chicago, IL) to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective September 9, 1991.

One Senior Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 9, 1991.

One Assistant to the Secretary's Representative (Denver, CO), Office of Congressional and Intergovernmental Affairs. Effective September 9, 1991.

One Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 26, 1991.

One Special Assistant to the Director, Women's Bureau. Effective September 26, 1991.

One Assistant to the Secretary's Representative (Seattle, WA), Office of Congressional and Intergovernmental Affairs. Effective September 26, 1991.

National Endowment for the Arts

One Director of Public Affairs to the Chairman. Effective September 9, 1991.

National Transportation Safety Board

One Confidential Assistant to a Member of the Board. Effective September 13, 1991.

Office of National Drug Control Policy

One Confidential Assistant to the Deputy Chief of Staff. Effective September 9, 1991.

One Staff Assistant to the Chief of Staff/National Security Advisor. Effective September 16, 1991.

Pension Benefit Guaranty Corporation

One Staff Assistant to the Deputy Executive Director and Chief Negotiator. Effective September 13, 1991.

Securities and Exchange Commission

One Secretary (Typing) to the Deputy Director of Market Regulation. Effective September 13, 1991.

Department of State

One Protocol Officer to the Assistant Chief of Protocol for Visits, Office of Protocol. Effective September 13, 1991.

Department of the Treasury

One Staff Assistant to the Assistant Secretary (International Affairs). Effective September 6, 1991.

One Staff Assistant to the Deputy Assistant Secretary for Information Systems. Effective September 19, 1991.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Finance and Information Resources Management. Effective September 9, 1991.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P.218.

Office of Personnel Management.

Constance Berry Newman,
Director.

[FR Doc. 91-27449 Filed 11-14-91; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of a Collection of Information Under the Paperwork Reduction Act; Procedure for Complying With Statutory Notification Requirement

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested that the Office of Management and Budget ("OMB") approve a new collection of information, PBGC Form 200, under the Paperwork Reduction Act. This collection of information implements a statutory requirement to notify the PBGC of a failure to make a required payment to a single-employer plan covered by title IV of the Employee Retirement Income Security Act of 1974 when the total of unpaid balances of required payments not made when due (including interest) exceeds \$1 million. The PBGC needs this information to make decisions regarding enforcement of the statutory lien imposed in favor of the plan for failure to make required contributions. Because the PBGC has requested that OMB conduct its review on an expedited schedule, the PBGC is publishing a copy of the collection of information together with the related instructions. The effect of this notice is to advise the public of PBGC's request for OMB approval of and to solicit public comment on this collection of information.

ADDRESSES: All written comments should be addressed to Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith A. Neibrief, Attorney, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8886 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1001 *et seq.*). In the Pension Protection Act ("PPA"), Congress amended the minimum funding standards of section 412 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 412) and section 302 of ERISA (29 U.S.C. 1082) by, among other things, adding identical lien provisions as new subsection (n) and new subsection (f), respectively (section 9304(e)(2) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203)). These provisions apply for any post-1987 plan year for which the funded current liability percentage (as defined in Code section

412(1)(8)(B) and ERISA section 302(d)(8)(B)) of a defined benefit plan other than a multiemployer plan (*i.e.*, a single-employer plan) is less than 100 percent.

Section 412(n)(1) of the Code and section 302(f)(1) of ERISA impose a lien in favor of a plan that is subject to the minimum funding standards if (1) any person fails to make a required installment or any other payment required under section 412 of the Code and section 302 of ERISA when due, and (2) the unpaid balance of the required installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million. The lien is upon all property and rights to property (whether real or personal) belonging to the person or persons that are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Any such lien may be perfected and enforced only by the PBGC or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group (Code section 412(n)(5) and ERISA section 302(f)(5)). Therefore, section 412(n)(4) of the Code and section 302(f)(4) of ERISA require persons committing payment failures to notify the PBGC, within 10 days of the due date the required installment or other required payment, whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

The PBGC has developed PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, to implement the statutory notification requirement with respect to single-employer plans that are covered by Title IV of ERISA. Form 200 would be filed by a contributing sponsor and, if a contributing sponsor is a member of a parent-subsidiary controlled group of corporations or group of trades or businesses under common control, the parent of such group. (Where there is more than one parent, "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group.)

Since each member of a controlled group of which a contributing sponsor is a member is liable for payment of all required contributions and installments (Code section 412(c)(11) and ERISA section 302(c)(11)), all members of the controlled group commit a failure described in paragraph (f)(1) and, hence,

are subject to the statutory notification requirement. Nevertheless, to minimize the reporting burden, the PBGC would (at this time) consider compliance with a requirement to file Form 200 by either a contributing sponsor or a parent to satisfy the notification requirement for all members of the same controlled group as the person who files Form 200. The PBGC emphasizes that the scope of the filing requirement does not in any way limit the joint and several liability for required payments of each controlled groupmember, the imposition of the statutory lien on all assets of each controlled group member, or the ability of the PBGC to take all appropriate steps to perfect and enforce the lien.

The PBGC also would minimize the burden by restricting Form 200 to information generally needed to make decisions regarding enforcement of liens created under section 412(n)(1) of the Code and section 302(f)(1) of ERISA and by specifying information (to the extent possible) in terms of existing documents. In addition, the PBGC would avoid duplicative requirements by permitting a filer to respond to an item on Form 200 that calls for previously submitted documentation or other information by identifying the previous submission in which the response was provided.

In part I of Form 200, the filer would identify the plan, its administrator, the contributing sponsor or parent filing the form, all members of a controlled group of which the filer is a member (along with a description of the structure of that group), any other contributing sponsor(s), and an authorized contact. In parts II and III, the filer would provide information that the PBGC needs (1) to determine the amount of the statutory lien, (2) to evaluate the funding status of the plan, and (3) to evaluate the financial condition of the filer and members of the same controlled group (if any). The plan funding and financial information items essentially are copies of existing documents (e.g., plan actuarial valuation report, any Internal Revenue Service letter(s) granting or modifying a funding waiver, financial statements, and filings with the Securities and Exchange Commission). Finally, in part IV, an officer (or individual of comparable authority) of the filer would certify the information provided to the enrolled actuary and other information (including documentation) in the filing, and an enrolled actuary would certify the payment failure related information.

The PBGC anticipates that contributing sponsors and parents would be required to file Form 200 with respect to fewer than 10 plans annually. The PBGC estimates the costs of responding would be \$862.50 per plan when a payment failure first results in a total of unpaid balances of required payments (including interest) that exceed \$1 million ("initial filing") and \$412.50 when there is a subsequent payment failure and the total of unpaid balances of required payments (including interest) continues to exceed \$1 million ("subsequent filing"). Under the conservative assumption that, on average, one initial and two subsequent filings would be required annually with respect to each of 10 plans (*i.e.*, assuming more filings than the PBGC anticipates), the total annual burden on the public would be \$16,875 (\$862.50 + (\$412.50)(2) = \$1,687.50; (\$1,687.50)(10) = \$16,875).

The PBGC's cost estimates are based on a rate of \$150 per hour and average response times of 5.75 hours and 2.75 hours for initial and subsequent filings, respectively. These items are estimated averages that will vary depending on the nature and organization structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

In order to perform its functions effectively and efficiently, the PBGC believes use of Form 200 as a compliance procedure should be initiated in the near future. Therefore, pursuant to § 1320.18(g) of OMB's regulations (5 CFR 1320.18(g)), the PBGC has requested that OMB conduct its review of this collection of information on an expedited schedule of 30 days and, in accordance with § 1320.15(b)(1) of OMB's regulations (5 CFR 1320.15(b)(1)), it is publishing a copy of Form 200, together with the related instructions, as an appendix to this notice.

In today's **Federal Register**, the PBGC also is publishing an interim final, procedural rule requiring use of Form 200 for any notice of failure to make required contributions for which the 10-day filing period ends on or after January 1, 1992. The agency expects to publish a notice, including the collection of information approved by OMB and related instructions, before that date.

Issued at Washington, DC, this 12th day of November, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

Appendix

PBGC Form 200

Approved OMB XXXX-XXXX

Expires xx/yy/94

Notice of Failure to Make Required Contributions

FOR PBGC USE ONLY

File this form to notify the Pension Benefit Guaranty Corporation of a failure to make required contributions (see ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A)) to a single-employer plan that is covered by Title IV of ERISA.

—Do NOT file this form for any other employee benefit plan.

—Do NOT file this form with the Internal Revenue Service.

—Do NOT file this form UNLESS the plan's funded current liability percentage is less than 100 percent.

—Do NOT file this form UNLESS the total of unpaid balances of required payments exceeds \$1 million.

PART I. GENERAL PLAN INFORMATION

1a Plan name

b Plan year commencement date

Month	Day	Year
-------	-----	------

2 Plan administrator

Name

Address (number and street)

City or town State ZIP Code

Telephone number _____ / _____

Area Code

3a Contributing Sponsor

Name

Address (number and street)

City or town State ZIP Code

Telephone number _____ / _____

Area Code

b Employer identification and plan numbers

Enter 9 digit EIN

Enter 3 digit PN

c Different EIN and/or PN used in previous filings with the PBGC, DOL, or IRS

Enter 9 digit EIN

Enter 3 digit PN

4a Is the contributing sponsor in item 3a a member of a controlled group?

Yes

No

b If you checked "Yes" to item 4a, that contributing sponsor's parent (if none, enter "none")

Name

Company/Firm

Address (number and street)

City or town State ZIP Code

Telephone number _____

Area Code

Enter 9 Digit EIN

c If you checked "Yes" to item 4a, are there any controlled group members other than the one(s) identified in item 3a and/or item 4b?

Yes

No

d If you checked "Yes" to item 4c, submit the name, address, telephone number, and EIN of each controlled group member for which information is not provided in item 3a or item 4b and a description of the structure of the controlled group.

5a Is there more than one contributing sponsor?

Yes	No
-----	----

b If you checked "Yes" to item 5a, submit the name of each contributing sponsor and, for each contributing sponsor for which information is not provided in previous items, the address, telephone number, and EIN.

6 Authorized contact (if same as individual signing certification in item 12, enter "same")

Name

Address (number and street)

City or town State ZIP Code

Telephone number _____

Area Code

PART II. PLAN FUNDING INFORMATION

7a Describe the required payment that resulted in the requirement to notify the PBGC

b Due date for the required payment described in item 7a

Month	Day	Year
-------	-----	------

8a Total of unpaid balances of required payments (including interest)

\$ _____

b Describe how the amount in item 8a was determined

9 Submit the following documentation and information with this form:

a Copy of most recent plan actuarial valuation report;

b Copy of Form 5500, Schedule B, for most recent plan year for which filed;

c Copy of any IRS letter(s) granting or modifying a funding waiver and/or an extension of the amortization period;

d Statement describing any pending request(s) for a funding waiver and/or for an extension of the amortization period.

PART III. CONTRIBUTING SPONSOR AND CONTROLLED GROUP FINANCIAL INFORMATION

10 Submit the following documentation with this form with respect to the contributing sponsor in item 3a and each other member of the same controlled group as that contributing sponsor:

a Copies of financial statements for the most recent three fiscal years for which available and of the most recent interim financial statements;

b Copies of any SEC filings during the past 6 months, including Form 10-K, Form 10-Q, and Form 8-K;

c If any member of the controlled group currently is the subject of a bankruptcy, insolvency, receivership, or similar proceeding, copies of any Statement of Affairs, Disclosure Statement, and Plan of Reorganization (or similar filing(s)) and interim financial reports filed in such proceeding.

PART IV. CERTIFICATIONS

11 Enrolled Actuary Certification
I certify that, to the best of my knowledge and belief, the information contained in items 7 and 8 of this form is true, correct, and complete and conforms to all applicable laws and regulations. In making this certification, I recognize that knowingly and willfully making

false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name (type or print)

Enrollment number

Company/Firm

Address (number and street)

City or town State ZIP Code

Telephone number _____ / _____

Area Code

Signature

Date

12 Contributing Sponsor or Parent Certification

I certify that, to the best of my knowledge and belief, the information made available to the enrolled actuary and all other information and documentation in this filing is true, correct, and complete and conforms to all applicable laws and regulations. In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name and title (type or print)

Name of contributing sponsor or parent

Address (number and street)

City or town State ZIP Code

Telephone number _____ / _____

Area Code

Signature

Date

DRAFT

PBGC

U.S. Government Agency

FILING INSTRUCTIONS FOR

NOTICE OF FAILURE TO MAKE REQUIRED CONTRIBUTIONS

PBGC FORM 200

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information to make decisions regarding enforcement of a lien imposed by ERISA section 302(f)(1) and Code section 412(n)(1). You are required to provide this notification pursuant to ERISA section 302(f)(4) and Code section 412(n)(4). Confidentiality is limited to that provided under the Freedom of Information Act and the Privacy Act.

The estimated time needed to complete this form is 5.75 hours when a payment failure first results in a total of unpaid balances that exceeds \$1 million and 2.75 hours when there is a subsequent payment failure and the total of unpaid balances continues to exceed \$1 million. These times are estimated averages that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

If you have any comments concerning the accuracy of these time estimates or suggestions for improving the form or these instructions, please send your comments to the Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22500), 2020 K Street, NW, Washington, DC 20006-1860 and Office of Management and Budget, OIRA, Attention Desk Officer—PBGC, room 3001, New Executive Office Building, Washington, DC 20503.

INTRODUCTION

ERISA section 302(f) and Code section 412(n) include the same lien provisions relating to a failure to make required contributions to a single-employer plan to the minimum funding standards (ERISA section 302/Code section 412) for any post-1987 plan year for which the plan's funded current liability percentage (as defined in ERISA section 302(d)(8)(B)/Code section 412(l)(8)(B)) is less than 100 percent.

There is a lien in favor of the plan if:

(1) Any person fails to make a required installment or any other payment required under ERISA section 302 and Code section 412 when due, and

(2) The unpaid balance of the required installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million.

The amount of the lien is equal to the lesser of (1) the amount by which the unpaid balances (including interest) described above exceed \$1 million or (2) the aggregate unpaid balance of required installments and other payments (including interest) for plan years beginning after 1987 for which payment has not been made when due. This amount is treated as taxes due and owing the United States.

The lien is upon all property and rights to property (whether real or personal) belonging to the person or persons who are liable for required

contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member). It arises on the 60th day following the due date for the required payment and continues until the last day of the first plan year in which the total of unpaid balances described above no longer exceeds \$1 million.

Any lien imposed for failure to make required contributions may be perfected and enforced only by the PBGC or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group. Therefore, ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A) require that PBGC be notified whenever there is a failure to make a required payment and the total of unpaid balances (including interest) exceeds \$1 million. Notice must be provided within 10 days of the due date for the required payment.

To comply with this notification requirement with respect to a single-employer plan that is covered by Title IV of ERISA, the PBGC requires that a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent, file Form 200 whenever such a failure occurs.

Note: The PBGC's decision not to require (at this time) controlled group members other than contributing sponsors and parents to file Form 200 does not in any way limit the joint and several liability of each controlled group member for required group member for required payments (whether the controlled group of which a contributing sponsor is a member is a "parent-subsidiary", "brother-sister", or "combined" group), the imposition of the lien on all assets of each controlled group member, or the ability of the PBGC to take all appropriate steps to perfect and enforce the lien.

The PBGC has restricted Form 200 to information generally needed in its decisionmaking regarding enforcement of a lien imposed by ERISA section 302(f) and Code section 412(n). If the PBGC concludes that it needs additional information in a particular case, it will notify (in writing) the person required to supplement the Form 200 and specify the date by which the additional information must be submitted.

Note: Pursuant to ERISA section 4071, the PBGC may assess a penalty against any person who fails to provide a notice or other material information required under ERISA section 302(f)(4), or any regulations thereunder, within the applicable time limit. The penalty is payable to the PBGC and may not exceed \$1000 for each day that the failure continues.

DEFINITIONS

As used in PBGC Form 200 and these instructions—

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under Code section 404(a)(1) for contributions required to be made to the plan under ERISA section 302 and Code section 412.

Controlled group, for purposes of ERISA section 302(f) and Code section 412(n), means any group treated as a single employer under subsection (b), (c), (m), or (o) of Code section 414.

Covered by Title IV of ERISA means that a plan so described is covered by ERISA section 4021(a) and not excluded under ERISA section 4021(b).

DOL means the Department of Labor.

Due date means the date set forth in ERISA section 302(e) and Code section 412(m) for payment of a required installment and, in the case of a payment other than a required installment, the date such payment is required to be made under ERISA section 302 and Code section 412.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

IRS means the Internal Revenue Service.

Parent means the parent of a "parent-subsidiary" controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of Code section 414 and the regulations thereunder). Where there is more than one parent in a "parent-subsidiary" group, the term "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group. (For example, if Corporation A owns all of the stock of Corporation B and Corporation C, and Corporation B owns all of the stock of Corporation X, the contributing sponsor, then the "parent" of Corporation X is Corporation A.)

PBGC means the Pension Benefit Guaranty Corporation.

Required installment means any of the four quarterly contribution payments required for each plan year by ERISA section 302(e) and Code section 412(m).

Required payment means a required installment or other payment required under ERISA section 302 and Code section 412.

SEC means the Securities and Exchange Commission.

Single-employer plan means a defined benefit plan (as defined in ERISA section 3(35)) that is not a multiemployer

plan (as defined in ERISA section 4001(a)(3)).

GENERAL INSTRUCTIONS

The filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a date, enter two digits in each box, e.g., enter "07" for July.

2. If responding to an item requires the attachment of documentation or information, mark the attachment to identify the item to which it responds.

No additions or deletions may be made to the certifications.

Who Must File

Form 200 must be filed by (1) a contributing sponsor and (2) if a contributing sponsor is a member of a "parent-subsidiary" controlled group, the parent of such group. However, if a timely and complete Form 200 is properly filed by either a contributing sponsor or the parent, the PBGC will deem the other to have so filed. (As noted above (see "Introduction"), each other member of any controlled group of which a contributing sponsor is a member also is jointly and severally liable for required payments and the PBGC may enforce the statutory lien imposed on its assets.)

When to File

Form 200, including all required documentation and information, must be filed with the PBGC no later than 10 days after the date for the required payment.

Note: Form 200 must be filed each time there is a failure described in ERISA section 302(f)(1) and Code section 412(n)(1) and the total of unpaid balances of required payments (including interests) exceeds \$1 million.

The filing date for Form 200 is the date on which it is received by the PBGC office specified below (see "Where to File"), if it is received no later than 4 p.m. on a weekday other than a Federal holiday. If it is received after 4 p.m. or on a weekend or a Federal holiday, the Form 200 is deemed to be filed on the next regular business day.

In computing the 10-day period, the due date of the payment that resulted in the requirement to notify the PBGC is not included. Form 200 is due 10 days thereafter unless that day is a Saturday, Sunday, or Federal holiday, in which case the 10-day period runs until 4 p.m. on the next day that is not a Saturday, Sunday, or Federal holiday.

Where to File

Form 200 may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Room 5500 (Code 45000), 2020 K Street, NW, DC 20006-1860.

For Copies of PBGC Form 200, Questions, Problems

To request copies of Form 200, contact the PBGC's Control Division (Code 45200) at the address or telephone number shown below.

Those who have questions or problems regarding Form 200 or these instructions may contact:

Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Administrative Review and Technical Assistance Division, (Code 45400), 2020 K Street, NW., Washington DC 20006-1860, Telephone: (202) 778-8800.

Hearing impaired persons may telephone (202) 778-8859.

These phone numbers are not toll-free numbers, and the PBGC cannot accept collect calls.

Use of Facsimile Forms

The PBGC will accept a reproduction or other facsimile of Form 200 if it presents the same items in the same location. However, any required signature must be an original.

Failure to Timely File

Pursuant to ERISA section 4071, the PBGC may assess a penalty for failure to timely file a complete Form 200. This penalty is payable to the PBGC and may not exceed \$1,000 a day for each day that the failure continues.

Previously Submitted Information

Because ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A) require that the PBGC be notified each time there is a failure to make a required payment and the total of unpaid balances of required payments (including interest) exceeds \$1 million, more than one filing may be required regarding the same plan, and at least some of the information included in a previous Form 200 may continue to be accurate and responsive at the time that a subsequent form 200 must be filed. It also is possible that information submitted to the PBGC in another context (e.g., in a distress termination filing pursuant to ERISA section 4041(c) or in a notice of a reportable event required by 29 CFR part 2615) is responsive. Therefore, a filer may respond to an item that calls for previously submitted documentation or other information by identifying the previous submission in which the response was provided.

SPECIFIC INSTRUCTIONS**Part I. General Plan Information**

1a Enter the complete name of the plan as it appears on the plan document.

b Enter the first day of the plan year for which the payment described in item 7a was required.

2 Enter the name, address, and telephone number of the individual or the board or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if a contributing sponsor is so designated, enter the name, address, and telephone number of that contributing sponsor.

3a Enter the name, address, and telephone number of (1) the contributing sponsor that is filing this form or (2) if the parent is filing this form, the controlled group member that is the contributing sponsor. (If the parent is filing and the plan covers the employees of more than one controlled group member, provide information with respect to the controlled group member with the greatest number of participants.)

b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor in item 3a by the IRS for income tax purposes and the 3-digit plan number (PN) assigned by the contributing sponsor.

c If the EIN/PN in item 3b is different from that used in earlier filings with the PBGC (including premium and reportable event filings), the DOL, or the IRS, enter the EIN/PN previously reported. (If a different EIN or PN has not been used for this contributing sponsor/plan in previous filings, enter "NA" (not applicable).)

4b If you checked "Yes" to item 4a, enter the name, address, telephone number, and EIN (or "none" if there is no EIN) of the parent (i.e., the filer or the parent of the filer's controlled group). (If the controlled group is a "brother-sister" group, enter "none").

d If you checked "Yes" to item 4c, attach a statement with (1) the name, address, telephone number, and EIN (or state that there is no EIN) of each other controlled group member and (2) a description of the structure of the controlled group. (The description must include the relationship of each member of the parent-subsidiary, brother-sister, or combined group, as applicable, to the controlled group. For example:

"Corporation A, the parent of a parent-subsidiary group of trades or businesses under common control, has three wholly-owned subsidiaries, Corporation B, Corporation C, and Partnership D. Corporation B and Corporation C each owns 50 percent of the stock of Corporation X, the contributing sponsor. Partnership D owns all of the stock of Corporation Y.")

5a Check "Yes" if the plan is maintained by two or more contributing sponsors and all plan assets are available to pay benefits to all plan participants and beneficiaries.

b If you checked "Yes" to item 5a, attach a statement with (1) the name of each contributing sponsor and (2) the address, telephone number, and EIN (or state that there is no EIN) of any contributing sponsor(s) for which this information is not provided in response to previous items.

6 Enter the name, address, and telephone number of an individual who is an authorized representative of the contributing sponsor or the parent filing this form if this is not the individual signing the certification in item 12.

Part II. Plan Funding Information

Note: An enrolled actuary must certify that the information in items 7 and 8, among other things, conforms to applicable Code and IRS requirements (see item 11).

7a Describe the required payment that was not made when due, resulting in the requirement to notify the PBGC (e.g., "the second quarterly installment for the plan year beginning on July 1, 1991").

8a Enter the total amount, as of the due date in item 7b, of the unpaid balance of the required payment described in item 7a and the aggregate unpaid balance of all preceding required payments for which payment was not made when due (i.e., include in this amount the unpaid balances, including interest, of all required payments for which payment was not made when due).

b Describe how the amount in item 8a was determined, including the actuarial assumptions and methods used if different from the actuarial assumption and methods used in the plan actuarial valuation report submitted in response to item 9a.

9c Attach a copy of any IRS letter(s) granting or modifying a funding waiver (under ERISA section 303/Code section 412(d)) or an extension of the amortization period (under ERISA section 304/Code section

412(e)) for any plan year, except a letter relating to (1) a waived funding deficiency that has been fully amortized (pursuant to ERISA section 302(b)(2)(C)/Code section 412(b)(2)(C)) or (2) an extended amortization period that has ended if all contributions required pursuant thereto have been made.

d Attach a statement describing any pending request(s) for a funding waiver (under ERISA section 303/Code section 412(d)) and/or for an extension of the amortization period (under ERISA section 304/Code section 412(e)), including the relief requested.

Part III. Contributing Sponsor and Controlled Group Financial Information

10a Attach copies of audited or, if not available, unaudited Financial statements that were prepared for the contributing sponsor and each other controlled group member individually, including balance sheets, income statements, statements of cash flows, and notes to financial statements and annual reports. However, if financial statements were only prepared on a consolidated basis for more than one controlled group member, consolidated financial statements and consolidating financial statements or, if not available, consolidating trial balances that identify each controlled group member individually may be attached instead.

IV. Certifications

11 This certification must be made by an enrolled actuary.

12 This certification must be made by an officer (or an individual of comparable authority in an unincorporated organization) of the contributing sponsor or parent that is filing the Form 200.

[FR Doc. 91-27552 Filed 11-14-91; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated**

November 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section

12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Kasler Corporation
Common Stock, No Par Value (File No. 7-7499)

Partners Preferred Yield, Inc.
Common Stock, \$.01 Par Value (File No. 7-7500)

RJR Nabisco Holdings Corp.
\$835 Depositary Shares (each representing one-fourth of a share of Series A Conversion Preferred Stock, \$.01 Par Value) (File No. 7-7501)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-27453 Filed 11-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29920; International Series Release No. 340; File No. SR-OCC-91-04]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Cross-Rate Foreign Currency Options

November 7, 1991.

On March 7, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-OCC-91-04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The

¹ 15 U.S.C. 78s(b)(1).

purpose of the proposed rule change is to enable OCC to issue, clear, and settle cross-rate foreign currency options ("crossrate options") which the Commission approved for trading on the Philadelphia Stock Exchange ("PHLX").² Notice of the OCC's proposal appeared in the *Federal Register* on April 18, 1991.³ OCC amended the proposal on September 20, 1991.⁴ The Commission did not receive any comments regarding the proposed rule change. This order approves the proposed rule change as amended.

I. Description of the Proposed Rule Change

The purpose of the proposed rule change is to enable OCC to issue, clear, and settle options to purchase or sell a foreign currency ("underlying foreign currency") where the exercise price and premium are designated in a different foreign currency ("trading currency") other than U.S. dollars. The Commission has approved for trading on the PHLX three such European-style⁵ cross-rate options: (1) Options on German deutsche marks with exercise prices in Japanese yen ("DM/JY options"); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German deutsche marks ("BP/DM options").⁶

² Securities Exchange Act Release No. 29919 (November 7, 1991).

³ Securities Exchange Act Release No. 29064, (April 10, 1991), 56 FR 15389.

⁴ OCC amended the proposal to reflect certain changes in the proposed procedures for clearance and settlement of cross-rate options. The changes include:

(1) clearing member settlement obligations are due on the exercise settlement date, not on the day after the exercise settlement date as originally proposed;

(2) OCC may reject transactions in cross-rate options for non-payment of premiums;

(3) clearing members that deposit cash margin in U.S. dollars or a foreign currency can make a withdrawal only in the same currency deposited;

(4) clearing member performance of its exercise settlement obligations to OCC is required before OCC renders counter performance to the clearing member;

(5) OCC will not accept delivery versus payment ("DVP") authorizations to effect exercise settlement until a future date when its DVP arrangements are in place; and

(6) OCC will not draft clearing members' foreign bank accounts for any provisional margin deficit.

Letter from James Yong, Assistant Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 19, 1991.

⁵ A European-style option is an option that is exercisable only on the date it expires.

⁶ OCC anticipates eventually to clear additional cross-rate options involving other currencies, different combinations of currencies, and American-style as well as European-style options. An American-style option is an option that is

a. OCC Processing Time Frames

Cross-rate options will trade during the same hours as the existing options on foreign currency.⁷ OCC will process cross-rate options using OCC's International Clearing System ("ICS") during the standard ICS "processing window" (i.e., between the hours of 4 p.m. and 6 p.m. Central Time ("CT")). Thereafter, non-U.S. dollar settlements of cross-rate options will be conducted in each country of origin prior to the next regular U.S. dollar settlement in the United States. OCC will transmit settlement instructions to OCC settlement banks in Japan and Germany at the opening of the business day in those countries (i.e., 6:45 p.m. CT, 8:45 a.m. in Japan, for JY settlements and 1:45 a.m. CT, 8:45 a.m. in Germany, for DM settlements). The settlement time in Japan and Germany for premium and margin settlements ("regular daily settlement") will be 11 a.m. for a clearing member pay and 12 noon for a clearing member collect (i.e., 9 p.m. CT and 10 p.m. CT for regular daily settlement in Japan and 4 a.m. CT and 5 a.m. CT for regular daily settlement in Germany).⁸

Notice of exercises and assignments of those exercises for cross-rate options will be processed in the same manner as other foreign currency options. Because the Commission is approving only European-style cross-rate options at this time, clearing members may submit notice of exercises to OCC for assignment only within a limited time before those options expire. Thus, OCC will not conduct daily exercise assignments and settlements. Settlement of exercised and assigned cross-rate options is described briefly below.

b. Margin of Cross-Rate Options

Under the proposed rule change, margin requirements for cross-rate options will be calculated using the

exercisable at any time before its expiration date. Any such proposal will be subject to Commission review pursuant to section 19(b)(2) of the Act. Letter from Don L. Horwitz, senior Vice President and General Counsel, to Jonathan Kallman, Assistant Director, Division, Commission, dated September 27, 1991.

⁷ Trading hours on the PHLX for cross-rate options will be 7 p.m.-11 p.m. and 12:30 a.m.-2:30 p.m. Eastern Daylight Time ("EDT") or 6 p.m.-10 p.m. and 11:30 p.m.-2:30 p.m. Eastern Standard Time ("EST").

⁸ Under OCC's proposal, settlement time with respect to cross-rate options means 11 a.m. in the country of origin in the trading currency. Cross-rate clearing members will be obligated at 11 a.m. in the country of origin to pay their regular daily settlements. One hour after the settlement time for each trading currency, OCC will be obligated to pay any premium amount due from OCC to each clearing member.

same risk-based margining system now used by OCC for all foreign currency options products but will be calculated in the trading currencies of those options. OCC then will convert the total margin requirement for each trading currency (e.g., combining margin requirements in DM/JY and BP/JY options) to a U.S. dollar equivalent which will be combined with the U.S. dollar margin requirement for other products in order to arrive at a total U.S. dollar denominated margin requirement.⁹

More specifically, during the processing window between 4 p.m. CT and 6 p.m. CT each business day, OCC will calculate a margin requirement reflecting current price and position information for the trading day with respect to only cross-rate options. This will be combined with the existing margin requirements for other products (based upon position and price information from the preceding trading day plus any intraday margin requirement imposed during the trading day just completed) to obtain a "provisional margin requirement." OCC will compare the provisional margin requirement with margin assets on deposit to determine whether the clearing member has a provisional margin deficit or provisional margin excess. OCC will require clearing members to deposit margin assets to eliminate any provisional margin deficit by the regular settlement time in the United States on the following business day.

OCC will not allow a clearing member to receive a premium collect in any trading currency to the extent that the clearing member has a provisional margin deficit or has insufficient provisional margin excess to cover a premium pay in a trading currency that settles at a later time.¹⁰ Premium collects that are withheld in this manner will be treated by OCC as margin deposits. OCC will notify clearing members, prior to the earliest settlement time in Japan and Germany (11 a.m. in Japan and 11 a.m. in Germany), if OCC will not be releasing JY or DM premium collects. A clearing member will be permitted to submit to OCC additional

⁹ OCC will add 3% of the margin requirement for cross-rate options to each clearing member's daily margin requirement to protect OCC against fluctuation in the exchange rates between the trading currencies and U.S. dollars. For example, if a clearing member's yen margin requirement is converted to \$100, OCC will require an additional 3% or a total of \$103.

¹⁰ For example, OCC would withhold the yen premium collect from a clearing member that has no margin deficit or excess, a premium collect in yen, and a premium pay in deutsche marks.

margin assets during business hours in Japan or Germany to obtain the same day release of the JY or DM premium collect.¹¹

c. Settlement

Under the proposed rule change, OCC will settle payment and delivery obligations for cross-rate options in basically the same way as existing foreign currency options except for differences in settlement procedures in the payment and collection of premiums and aggregate exercise prices in foreign currencies. Unlike foreign currency options, premiums for cross-rate options will settle in the country of origin of the particular trading currency during business hours of that country. OCC will require each clearing member qualified to trade cross-rate options to maintain a bank account in one of OCC's designated settlement banks in the country of origin of each trading currency and each underlying currency. Each clearing member also will be required to authorize OCC to draft these accounts for purposes of making premium and exercise settlements in such currency.

i. Premium Settlement

Premium settlement will take place in the country of origin at OCC designated settlement banks through debits and credits to clearing member and OCC accounts at those banks. Because premiums are paid to or collected from OCC, OCC has established overdraft credit facilities in Japan and Germany to ensure payment on a timely basis to clearing members in the event one or more clearing members fail to pay OCC on a timely basis. In the event of such a failure, OCC will draw on its credit facility to satisfy its payment obligations. OCC then will calculate the U.S. dollar equivalent of the JY or DM premium due from the failing clearing member and will draft this amount as part of the clearing member's morning settlement in the United States.¹² The

¹¹ Initially, OCC only will accept yen deposits to its account in Japan to satisfy additional margin obligations in yen and deutsche mark deposits to its account in Germany to satisfy additional margin obligation in deutsche marks. OCC anticipates expanding the types of qualified margin assets OCC will accept to include certain forms of margin denominated in foreign currencies, such as non-U.S. dollar denominated letters of credit, sovereign debt of approved foreign governments, and deposits of the trading currencies. Any such proposal will be subject to Commission review pursuant to section 19(b)(2) of the Act. Letter from Don L. Horwitz, *supra* note 6.

¹² Failure to make the payment in U.S. dollars could be grounds for OCC ceasing to act for the clearing member and liquidating its positions.

failing clearing member still will be required to meet its JY or DM premium settlement obligations at the settlement time (i.e., 11 a.m. in Japan and 11 a.m. in Germany) on the next foreign business day in the country of origin. If the firm has not satisfied its premium payment obligation at that time, OCC will instruct the settlement bank to purchase the currency required to repay the credit facility and OCC will use the failing clearing member's dollar deposits to pay the settlement bank. Failing clearing members will be assessed all costs pertaining to the settlement of overdrafts and may be subject to further disciplinary action.

ii. Exercise Settlement

OCC will net all exercise and assignment activity across accounts to a single net pay or collect in each trading and underlying currency. To the extent that a trading currency is also an underlying currency, OCC may effect settlement by netting such amount together with premium and cash margin amounts payable by or to the clearing member. Net pay/collect amounts will be settled through the cash settlement system in each country.

Under OCC's proposal, exercise settlement will be effected through "regular-way" procedures that use OCC as the intermediary between the clearing member due to receive the underlying foreign currency ("receiving member") and the clearing member obligated to deliver the underlying foreign currency ("delivering member").¹³ These procedures are described briefly below.

For regular-way exercise settlements of BP/DM cross-rate options, OCC will settle exercises on T+4 by collecting, at the same time, the strike price (DM) from the receiving member in Germany and the underlying foreign currency (BP) from the delivering member in England. One hour later, OCC will pay the strike price (DM) to the delivering member in Germany and deliver the underlying foreign currency (BP) to the receiving member in England.

The process differs somewhat for DM/JY and BP/JY cross-rate options because of the differences in time zones between Europe and Japan. For regular-way DM/JY cross-rate options, OCC

¹³ As in the case of existing foreign currency options, OCC anticipates eventually enabling cross-rate options clearing members to elect to make settlement through delivery versus payment ("DVP") procedures that essentially are the same as the existing DVP procedures for foreign currency options. Any such proposal will be subject to Commission review pursuant to section 19(b)(2) of the Act. See OCC's Rules, chapter XXI, rule 2107(j).

will collect the underlying foreign currency (DM) from the delivering member on T+3 in Germany. OCC will collect the strike price (JY) from the receiving member on T+4 in Japan and one hour later will pay the strike price (JY) to the delivering member. OCC will deliver the underlying foreign currency (DM) to the receiving member on T+4 at 12:00 noon in Germany. The process is similar for regular-way exercise settlements of BP/JY cross-rate options.

II. Discussion

Sections 17A(b)(3) (A) and (F) of the Act require a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.¹⁴ As discussed below, the Commission believes that OCC's proposed rule change is designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions and, thus, is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).

OCC's proposal parallels, in many respects, OCC's current processing of existing foreign currency option products except that premium and exercise prices are denominated in a foreign currency and are settled during the trading hours of the country of origin and in the country of origin. To the extent OCC's proposal is different, the Commission believes that it is appropriately designed to accommodate the requirements of section 17A of the Act. Specifically, during its review of the proposal, the Commission considered the adequacy of cross-rate options premium and exercise settlement procedures and the risks associated with settlement of cross-rate options.

a. Premium Settlement of Cross-Rate Options

A different aspect of OCC's proposal is the daily settlement of premium payments in currencies other than U.S. dollars. Under OCC's rules, OCC generally will be obligated to pay clearing members' JY or DM premium settlement at 12 noon local time (10 p.m. CT for JY settlement; and 5 a.m. CT for DM settlement)¹⁵ even if OCC has not

received the premium settlement from the paying clearing member.¹⁶ OCC has established several procedures to protect itself and its clearing members against the risk of a clearing member default.

OCC has established agreements with banks in Japan and Germany to help assure completion of daily premium settlements. As described above, clearing members must maintain accounts at OCC designated banks in the countries of origin of the trading and underlying currencies. The foreign settlement banks will provide OCC with notice of dishonor of clearing member premium pay obligations no later than settlement time (*i.e.*, 11 a.m. in Japan, 9 p.m. CT for JY settlement; and 11 a.m. in Germany, 4 a.m. CT for DM settlement).¹⁷ Receiving notice of dishonor one hour before OCC must fulfill its payment obligation should provide OCC time to make arrangements to finance payment in the event of clearing member failure or default. OCC has established overdraft credit facilities with the OCC settlement banks in Japan and Germany to ensure prompt payment of premiums owed by OCC to clearing members in the event a clearing member fails to meet its settlement obligation in either Japan or Germany. OCC believes these facilities will be sufficient to accommodate anticipated daily trading activity in cross-rate options.¹⁸

members whose settlement bank is also OCC's concentration bank will not be available until the end of the banking day in Japan for overnight investment. Clearing members whose settlement bank is an OCC designated satellite bank in Japan will have settlement funds available for withdrawal at settlement time (12 noon in Japan), subject to the arrangements those banks have with clearing members independent of the arrangements with OCC. Premium funds settled through OCC designated banks in Germany will be available for withdrawal at the settlement time (12 noon in Germany).

¹⁶ OCC will not "guarantee on match" transactions in cross-rate options. OCC may reject transactions in cross-rate options for non-payment of premiums until 12 p.m. local time (*i.e.*, 10 p.m. CT for premium settlement in Japan, and 5 a.m. CT for premium settlement in Germany).

¹⁷ In many respects, OCC's banking arrangements are modelled after its arrangements for settling premium payments in the U.S. For example, premium settlements will be effected through debits and credits to OCC and clearing member accounts at OCC approved settlement banks based on instructions OCC delivers to the settlement banks one or more hours before settlement time. Credits to OCC's account are in funds available for immediate withdrawal and credits to clearing member accounts are in same-day funds with the funds available for immediate withdrawal in most cases. Securities Exchange Act Release No. 23601 (September 5, 1986), 51 FR 32707.

¹⁸ OCC has agreed to review its overdraft facilities on a periodic basis. In this regard, the Commission encourages OCC to reconsider, in connection with its annual risk assessment review, whether additional safeguards are appropriate.

OCC will monitor clearing member financial conditions and positions to help ensure that clearing members are competent to conduct trading in cross-rate options and are maintaining adequate financial resources to meet their obligations to OCC on a timely basis. Furthermore, OCC's rules include disincentives to discourage clearing members from failing to pay their premium obligations in cross-rate options. In the event of such a failure, OCC will withdraw the U.S. dollar equivalent of the JY or DM premium due from the failing clearing member's designated U.S. bank account as part of the clearing member's morning settlement in the United States. The failing clearing member will remain obligated to make payment in the trading currency, and the amount of such obligation will be netted together with all premium obligations owed in the trading currency on the next foreign business day. If the firm has not satisfied its obligation at that time, OCC will instruct the settlement bank to buy-in for the account of the clearing member the trading currency in an amount equal to the amount the clearing member failed to pay on the preceding foreign business day. The clearing member's dollar deposits will be used for the buy-in. OCC will assess the defaulting clearing member all interest and transaction costs OCC incurs in settling the fail (*e.g.*, OCC's overdraft expenses in the trading currency and any currency buy-in expenses). The clearing member also may be subject to further disciplinary action.

Based on initial estimates of trading and settlement volumes, the Commission believes these safeguards are adequate. Cross-rate options, however, have not yet traded on any U.S. exchange, and operating an international settlement system for cross-rate options will be a new venture for OCC. Therefore, the Commission expects OCC, once it gains more experience settling cross-rate options, to consider changes in the safeguards and to consider new or different safeguards.¹⁹

¹⁹ For example, OCC might require cross-rate options clearing members to report to OCC periodically about the credit facilities they maintain to support cross-rate options premium settlements. Alternatively, OCC might require cross-rate options clearing members to maintain minimum credit facilities, as specified by OCC, in the country of origin of the trading currencies.

OCC has informed the Division staff that the Chicago Board Options Exchange ("CBOE"), the New York Stock Exchange, and the PHLX, the designated examining authorities ("DEA") for expected cross-rate options clearing members, have

Continued

¹⁴ 15 U.S.C. 78q-1(b)(3) (A) and (F).

¹⁵ A clearing member's ability to withdraw funds at settlement time (12 noon for a clearing member collect) may be limited. Although OCC's rules obligate OCC to pay premium settlement at 12 noon local time, final settlement at OCC's concentration bank in Japan is not until the end of the banking day in Japan. Therefore, settlement funds for clearing

Another aspect of this proposal is that OCC will be conducting settlements throughout the day based on a snapshot of a clearing member's activity. At the time OCC is paying or collecting premiums in Japan, for example, OCC is accepting trade data from its participant exchanges about trades in other classes of options that could create a payment obligation or margin deficit in the clearing member's account. OCC has taken steps to prevent a clearing member from collecting funds in one time zone if at the settlement time in that time zone the clearing member has a margin deficit or outstanding payment obligation to OCC in another time zone.²⁰ OCC is also taking steps, with the CBOE in particular, to obtain matched trade data on an accelerated basis throughout the trading day instead of waiting for that data until after trading hours. Assuming OCC develops the appropriate systems, this will permit OCC to obtain a better profile of clearing member position risk in determining whether to release funds to the clearing member in other time zones.

b. Exercise Settlement of Cross-Rate Options

The Commission initially approved OCC's issuance, clearance, and settlement of foreign currency options on November 24, 1982.²¹ Since that time OCC has gained experience in processing foreign currency options and has introduced European-style foreign currency options.²² OCC's proposed procedures for exercise settlement of cross-rate options are substantially the same as OCC's current procedures for settling European-style foreign currency options. These procedures have been proven safe and efficient. To the extent OCC's exercise settlement procedures for cross-rate options are different, the Commission believes that OCC's

expressed their willingness to provide OCC with information concerning those clearing members' credit facilities. OCC also has expressed its intentions to discuss such information sharing with other exchanges that are the DEAs of possible cross-rate options clearing members. Telephone conversation between James C. Yong, Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, Division, Commission (November 6, 1991).

²⁰ For example, if a clearing member has a premium collect in Japan and a premium pay in Germany, OCC will not pay the premium collect to the clearing member in Japan unless the clearing member has provisional margin excess to cover the clearing member's pay obligation in Germany. In order to release the premium pay in Germany, the clearing member may deposit yen during the trading hours in Japan to eliminate any provisional margin deficit.

²¹ Securities Exchange Act Release No. 19274 (November 24, 1982), 47 FR 54393.

²² Securities Exchange Act Release No. 22369 (August 28, 1985), 50 FR 36176.

proposal should help ensure the same degree of safety and efficiency for exercise settlement of cross-rate options.

OCC will act as an intermediary between the receiving member and the delivering member. OCC will collect in the country of origin the strike price in the trading currency from the receiving member and the underlying currency from the delivering member, before delivering the underlying currency to the receiving clearing member. OCC will require clearing members to perform their exercise settlement obligations to OCC before OCC renders counter performance to that clearing member, regardless of whether the clearing member is a delivering or receiving clearing member with respect to the underlying security.

If a clearing member fails to make a delivery or a payment of any underlying currency or any trading currency, OCC will either borrow the required foreign currency in order to meet OCC's settlement obligation²³ or will direct the clearing members entitled to receive delivery or payment of such foreign currency on the same exercise settlement date to buy-in the foreign currency for the counter currency (*i.e.*, the underlying currency if the non-defaulting clearing member is the receiving clearing member or the trading currency if the non-defaulting clearing member is the delivering clearing member). Under the proposal, OCC will have the power to pledge and repledge the amount of the counter currency that would have been payable to the defaulting member at any time and may cause such counter currency to be sold out and the proceeds applied against such amounts due to OCC. If a clearing member fails to complete exercise settlement of cross-rate options, OCC may assess the defaulting clearing member related interest and transaction costs.

OCC stated that it has the capacity and capability to handle any increases in volume or users resulting from initiation of trading in cross-rate options. OCC also stated that the addition of cross-rate options to the ICS will not pose any increase in internal or external threat to the security of ICS.²⁴

²³ OCC has established credit facilities with the OCC settlement banks in Japan and Germany. OCC believes the credit facilities will be sufficient to ensure exercise settlement in the event a participant fails to make delivery or payment of any underlying or trading currency. In order to secure the exercise credit facilities, OCC has given the settlement banks a lien on the counter currency to be delivered from the non-defaulting clearing member.

²⁴ Letter from James Yong, Assistant Vice President and Deputy General Counsel, OCC, to

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-91-04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-27451 Filed 11-14-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

November 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

RJR Nabisco Holdings Corporation, Depository Shares (representing Preferred Equity Redeemable Cumulative Stock) (File No. 7-7502)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

Victoria Berberi-Doumar, Office of Automation and International Markets, Division of Market Regulation, Commission, dated September 23, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-27454 Filed 11-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29919; International Series No. 339; File Nos. SR-PHLX-90-12; 91-03; and 91-23]

**Self-Regulatory Organizations;
Philadelphia Stock Exchange Inc.;
Order Approving Proposed Rule
Changes Relating to the Trading of
Options on Three Cross-Rate
Currencies**

November 7, 1991.

I. Introduction

On November 26, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-PHLX-90-12) to allow the PHLX to trade standardized put and call options on three cross-rate currencies, specifically, the German mark/Japanese yen ("DM/YN"), British pound/German mark ("BP/DM") and the British pound/Japanese yen ("BP/YN"). The proposed rule change was published in Securities Exchange Act Release No. 28737 (January 3, 1991), 56 FR 1042. No comments were received on the proposed rule change.

The PHLX also has submitted two corollary proposed rule changes regarding the margin rules applicable to cross-rate options. First, on March 13, 1991, the Exchange submitted a proposed rule change (SR-PHLX-91-03) establishing margin requirements for short positions in cross-rate options. Thereafter, on May 6, 1991, the Exchange submitted a proposed rule change (SR-PHLX-91-23) regarding the appropriate forms of margin deposits for cross-rate currency options. These proposals were published for comment in Securities Exchange Act Release Nos. 29039 (April 3, 1991), 56 FR 14720 and 29225 (May 23, 1991), 56 FR 24866, respectively. No comments were received on the proposed rule changes.

II. Description of the Proposal

The PHLX initially commenced the trading of foreign currency options on December 10, 1982, with the introduction

of options on the British pound, Canadian dollar, Japanese yen, German mark and Swiss franc.³ The Exchange subsequently expanded its foreign currency options program to include three other foreign currencies: the French franc, European Currency Unit, and Australian dollar.⁴ All of the foreign currency options presently listed and traded on the PHLX are U.S. dollar denominated. With a U.S. dollar-denominated foreign currency option, an option holder receives the right to purchase or sell a stated amount of a particular foreign currency at a pre-determined price (*i.e.*, exercise price) that is denominated in U.S. dollars. The currency in which the option premium and exercise price are denominated, in this case the U.S. dollar, is referred to as the "trading" currency, while the other currency is referred to as the "underlying" currency.

The Exchange now proposes to list and trade three cross-rate currency options. A cross-rate currency option is identical to a U.S. dollar-denominated foreign currency option except that the "trading" currency is not U.S. dollars but some other foreign currency. For example, the PHLX has proposed to trade a British pound/Japanese yen cross-rate option. For this option, the exercise price would be expressed in a certain number of yen per pound and premiums would be quoted and paid in yen. Accordingly, the Japanese yen would be the "trading" currency and the British pound would be the "underlying currency." The Exchange also has proposed to trade German mark/Japanese yen and British pound/German mark cross-rate options, where the German mark and the British pound are the underlying currencies, respectively. The cross-rate options will be available in European-Style⁵ puts and calls, issued by the Options Clearing Corporation ("OCC").⁶

³ See Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 ("Foreign Currency Options Approval Order").

⁴ See, Securities Exchange Act Release Nos. 10822 (April 4, 1984), 49 FR 14611 (French franc); 22853 (February 3, 1986), 51 FR 5129 (European Currency Unit); and 23945 (December 30, 1986), 52 FR 633 (Australian dollar).

⁵ A European-style option may be exercised only during a specified period—which may be as short as a single business day—just before the option expires.

⁶ OCC also has submitted a rule proposal to accommodate the trading of cross-rate options (See File No. OCC-91-4). The Commission approved this filing on November 7, 1991. See Securities Exchange Act Release No. 29920 (November 7, 1991) ("OCC Cross-Rate Options Approval Order").

The PHLX, in designing the proposed cross-rate currency options contracts, has sought to respond to the investment and hedging needs of institutional investors who desire to manage their foreign currency risk exposure. The Exchange has proposed the cross/rate currency options in recognition of the fact that the international financial market is increasingly no longer exclusively focused on the U.S. dollar, which previously had prompted the PHLX's U.S. dollar-denominated foreign currency options. Instead, world demand for non-U.S. dollar-denominated foreign currency option contracts has prompted the PHLX to propose cross-rate foreign currency options. The PHLX believes this demand has been spawned by recent dramatic increases in volatility levels for cross-rate options.⁷ The Exchange also represents that this new interest in non-U.S. dollar-denominated currency options may also be attributed to a decline in the "reserve" status of the U.S. dollar, as well as investment opportunities arising throughout Europe and developing Pacific Rim countries.

The PHLX proposes to trade cross-rate options subject to substantially the same regulatory scheme as it currently applies to U.S. dollar-denominated foreign currency options. Among other things, PHLX members doing business with the public in cross-rate options will be subject to the same disclosure,⁸ account approval, suitability, and supervision and qualifications testing requirements as with dollar-denominated foreign currency options. In addition, the options will be traded under the Exchange's specialist system with supplemental market making support provided by Registered Options Traders ("ROTS"). Transaction and quotation information about cross-rate options also will be disseminated to investors through the Options Price Reporting System via market

⁷ See letter from Murray L. Ross, Secretary, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated August 6, 1991.

⁸ The Commission has approved amendments to the Options Disclosure Document ("ODD") to accommodate the cross-rate currency options proposed to be traded by the PHLX by providing for a separate booklet to be read in conjunction with the more general ODD entitled "Characteristics and Risks of Standardized Options," which is required to be provided to all options investors. This separate booklet, among other things, describes standardized cross-rate foreign currency options and the special characteristics and risks of these options and will be required to be provided to investors in cross-rate options before they may engage in any cross-rate options transactions. See Securities Exchange Act Release No. 29780A (October 10, 1991), 56 FR 52107 ("Cross-Rate Options ODD Approval Order").

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1989).

information vendors in the same manner as any other foreign currency option. Finally, the trading hours for cross-rate options will be the same as for U.S. dollar-denominated foreign currency options.⁹

The proposed PHLX cross-rate options contracts will have a unit of trading as follows: 500,000 BP for the BP/DM options; 1,000,000 DM for the DM/JY options; and 500,000 BP for the BP/JY options. The PHLX proposes to introduce options series at three month intervals with maturities of three, six and nine months, and two additional near-term spot months. The proposed strike price intervals for each cross-rate option are as follows: (1) .02 DM for the BP/DM option; (2) one JY for the DM/JY option; and (3) two JY for the BP/JY option. In addition, in accord with Exchange rules, the PHLX will open new series of cross-rate currency options at exercise price intervals that are appropriate given current market conditions, such as the volatility of exchange rates.¹⁰ Finally, Exchange position and exercise limits will be applicable to cross-rate currency options, limiting to 7,500 contracts the number of contracts that can be held or written on the same side of the market, and that can be exercised in a five-business day period.¹¹

Nevertheless, the PHLX has proposed several rule changes to accommodate the trading of cross-rate options. First, the Exchange has proposed to amend PHLX Rule 1014 concerning the maximum quote spread parameters for specialists and ROTs. In order to ensure the maintenance of a fair and orderly market, the PHLX proposal places maximum limits on the bid-ask differentials that may be quoted by

⁹ Trading hours for cross-rate currency options will be 7-11 p.m. and 12:30 a.m.-2:30 p.m. Eastern Daylight Time (EDT) or 6-10 p.m. and 11:30 p.m.-2:30 p.m. Eastern Standard Time (EST).

¹⁰ In bringing up new strike prices for cross-rate foreign currency options, the PHLX intends to follow existing standards used for the introduction of new strike prices on dollar-denominated foreign currency options. These standards are based upon movements in the spot prices of underlying currencies up or down to an existing strike price and the degree of customer interest. See *supra* at note 7.

¹¹ The PHLX submitted an amendment to the cross-rate currency option filing (SR-PHLX-90-12) on July 15, 1991, to address position and exercise limits. See letter from Murray L. Ross, Secretary, PHLX, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated July 12, 1991. This amendment to Exchange Rules 1001 and 1002 limits to 7,500 contracts the number of cross-rate currency option contracts that can be held on the same side of the market for each cross-rate option and provides that a maximum of 7,500 contracts on the same side of the market for each cross-rate option can be exercised within five business days.

specialists and ROTs for each particular cross-rate option. The maximum spread for each options class is as follows:

Currency	Current bid	Maximum spread
DM/JY	.40 JY or less	.12 JY
	.41 JY to 1.60 JY	.16 JY
BP/DM	More than 1.60 JY	.20 JY
	.0040 DM or less	.0015 DM
BP/JY	.0041 DM to .0160 DM	.0025 DM
	More than .0160 DM	.0035 DM
	.40 JY or less	.15 JY
BP/JY	.41 JY to 1.60 JY	.25 JY
	More than 1.60 JY	.35 JY

Second, the PHLX has proposed to modify PHLX Rule 1034 regarding minimum fractional price changes of premiums. Specifically, the Exchange proposes the following minimum tick fluctuations: (1) .01 JY for DM/JY options; (2) .0001 DM for BP/DM options; and (3) .01 JY for BP/JY options.

Third, the PHLX has proposed two amendments to Rule 722 with respect to the margin requirements for cross-rate currency options. The Exchange proposes to amend PHLX Rule 722(c)(2)(B)(i) to provide that margin requirements for short positions in cross-rate options will be equal to 100% of the option premium plus 4% of the value of underlying contract, with an adjustment for out-of-the-money options to be not less than 100% of the option premium plus ¾% of the underlying contract value.¹² This margin calculation will be undertaken in the trading currency for each cross-rate option contract. The Exchange represents that these margin levels would provide adequate cover for each cross-rate product's historical volatility with a 96% level of confidence.¹³ The

¹² See File No. SR-PHLX-91-03.

¹³ The PHLX conducted a variety of studies with respect to margin levels for cross-rate currency options over seven day periods. At a margin level of premium plus 4%, the PHLX concluded that the margin levels would cover the historical volatility of the three cross-rates over a seven-day period with a level of confidence greater than 96%. The data for each particular cross-rate is as follows:

(1) DM/JY: At premium plus 4%, margins covered the historical volatility with a 97.23% level of confidence during the period July 30, 1990 to July 30, 1991.

(2) BP/JY: At premium plus 4%, margins covered the historical volatility with a 98.05% level of confidence during the period July 30, 1990 to July 30, 1991.

(3) BP/DM: At premium plus 4%, margins covered the historical volatility with a 100% level of confidence during the period July 30, 1990 to July 30, 1991.

See letter from Murray L. Ross, Secretary, PHLX, to Jeffrey Burns, Staff Attorney, Division of Market Regulation, SEC, dated August 1, 1991 ("Margin Coverage Letter").

Exchange also proposes to amend PHLX Rule 722(c)(2)(J) to extend the applicability of the provisions governing appropriate customer margin deposits for short currency options positions to cross-rate currency options.¹⁴ This amendment will clarify that any of the forms of margin specified in the Regulations of the Board of Governors of the Federal Reserve System ("FRB") will suffice as an appropriate margin deposit for cross-rate currency options. In addition, the PHLX proposes that investors in cross-rate currency options should be able to utilize letters of credit that comply with the standards established in PHLX Rule 722(c)(2)(J). Such a letter of credit, however, will have to be denominated in the underlying currency of the cross-rate currency option contract.

III. Discussion

The Commission finds that the three PHLX proposals are designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.¹⁵ Therefore, the Commission finds that the proposals are consistent with the requirements of the Act applicable to a national securities exchange, in general, and section 6(b)(5), in particular.¹⁶ The Commission believes that cross-rate currency options will provide a useful vehicle for institutional investors, corporations, banks, insurance companies, and other investors to hedge their exposure to fluctuations in the value of foreign currencies, thereby protecting investors and promoting the public interest.

In the order approving the PHLX's dollar-denominated foreign currency options, the Commission concluded that the rules proposed to accommodate the listing and trading of foreign currency options were consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder.¹⁷ In essence, in that order the Commission analyzed a "cross-rate" currency option between the U.S. dollar and various foreign currencies. Therefore, the present PHLX proposal to trade three cross-rate currency options between two foreign currencies can be viewed as merely a proposal to expand the number of existing foreign currency options, with the slight variation that the "trading" currency is a currency other than the U.S. dollar.

¹⁴ See File No. SR-PHLX-91-23.

¹⁵ 15 U.S.C. 78f(b)(5) (1982).

¹⁶ See Foreign Currency Options Approval Order, *supra* note 3.

Nevertheless the trading of cross-rate options does involve risks to investors beyond those associated with U.S. dollar-denominated foreign currency options. Specifically, because the value of cross-rate options may vary with changes in the value of either the trading currency or underlying currency relative to each other or other currencies generally, investors in cross-rate options must consider economic developments in two foreign countries instead of one. In addition, investors wishing to convert gains or losses from cross-rate options into U.S. dollars or other currencies will be exposed to risks from changes in the exchange rate between their "home" country and either the trading currency or underlying currency.¹⁷ Finally, the settlement procedures associated with the exercise of cross-rate options is more complex because both the underlying and the trading currency are generally required to be paid in the home country of each particular currency. The Commission, however, believes the supplement to the ODD covering cross-rate options, which the Commission has separately approved,¹⁸ combined with the existing discussion of foreign currency options in the ODD, adequately describes the risks of trading in these options. Moreover, today the Commission separately has approved an OCC proposal to clear cross-rate options, and that proposal addresses the foreign currency settlement aspects of the product.¹⁹

In addition, the Commission believes that the rule changes proposed by the Exchange to accommodate cross-rate options are consistent with Act. First, the Commission believes that PHLX Rule 1014, as amended, will provide for appropriate maximum quote spread parameters for specialists and ROTs trading cross-rate currency options. Specifically, the Commission believes the proposed quote spread parameters for the cross-rate currency options are designed to satisfy adequately the affirmative obligations of specialists and ROTs. The maximum bid-ask differentials are structured to be comparable to those utilized for the Exchange's other foreign currency

¹⁷ For example, if an investor holds an in-the-money BP/JY option and seeks to convert his gains into U.S. dollars, he may realize a gain in yen by purchasing pounds at the exercise price and reselling them for yen at the current exchange rate. If the amount of gain exceeds the premium paid for the option, the investor realizes a profit. However, if the yen has depreciated relative to the U.S. dollar, the gain may be reduced or transformed into a loss when the yen are converted back to U.S. dollars.

¹⁸ See Cross-Rate Options ODD Approval Order, *supra* note 8.

¹⁹ See, OCC Cross-Rate Options ODD Approval Order, *supra* note 6.

options and are intended to facilitate tightly quoted markets without impairing specialists' and ROTs' ability to provide market depth and liquidity.²⁰ Accordingly, the Commission believes that the proposed quote spread parameters are consistent with the obligation of PHLX specialists and ROTs under the Act to provide fair and orderly markets.

Second, the Commission believes that the amendment to PHLX rule 1034 to provide for minimum fractional price changes of premiums or "ticks" for cross-rate options consistent with the Act.²¹ The fractional changes or "ticks" proposed by the PHLX were selected because they correspond to the minimum price fluctuations allowed for interbank foreign exchange quotations. Accordingly, the Commission believes that these rule changes are appropriate, particularly since they should enhance the attractiveness and utility of the PHLX foreign currency options market to interbank, futures, and swap market participants.

Third, the Commission concludes that the proposed position and exercise limit of 7,500 contracts for the cross-rate options will serve to reduce concerns regarding manipulations or disruptions of the markets for cross-rate currency options, other currency options, and the underlying currencies, while at the same time not hampering the depth and liquidity of the market for the proposed cross-rate currency options. In addition, because the proposed position and exercise limits for cross-rate currency options correspond to existing levels for U.S. dollar-denominated foreign currency options traded on the Exchange, the Commission believes that they are consistent with the Act.²²

²⁰ As with dollar-denominated foreign currency options, the PHLX did not propose specific continuity standards for cross-rate currency options due to the absence of last sale reporting and the fact that only representative bids and offers for foreign currencies traded in the interbank market are supplied by vendors.

²¹ A "tick" is an upward or downward movement in the price of a security.

²² Exchange Rules presently limit to 100,000 contracts the number of foreign currency options contracts held on the same side of the market relating to the same underlying foreign currency. Similarly, PHLX rules prohibit an investor, or group of investors acting in concert, from exercising 100,000 contracts on the same underlying foreign currency within five business days. See PHLX Rules 1001 and 1002; Securities Exchange Act Release No. 23710 (October 15, 1986), 51 FR 37691. Since the existing contract size for BP and DM foreign currency options are 12,500 pounds and 62,500 marks, respectively, and the proposed contract sizes for cross-rate currency options are 500,000 BP for the BP/DM cross-rate, 1,000,000 DM for the DM/JY cross-rate, and 500,000 BP for the BP/JY cross-rate, the position and exercise limits for cross-rate, the position and exercise limits for cross-rate foreign

Fourth, the Commission believes the proposed margin levels for cross-rate options will result in adequate coverage of contract obligations, and are designed to preclude systemic risks arising from excessively low margin levels. Accordingly, the Commission finds the margin levels to be consistent with the Act. As described above, the Exchange proposes to require a margin requirement of 100% of options premium plus 4% of the value of the underlying foreign currency, with an adjustment for out-of-the-money options not to be less than 100% of the current option's premium plus 3/4% of the value of the underlying foreign currency. This proposal is consistent with the uniform methodology for calculating initial and maintenance margin requirements for options contracts approved by the Commission in 1985,²³ and establishes the same margin levels as for the Exchange's other foreign currency options.²⁴

In its rule filing, the PHLX indicated that the proposed margin system for cross-rate currency options would adequately cover each cross-rate product's historical volatility over a seven day period, with a 95% level of confidence.²⁵ The commission is satisfied, based upon a review of the frequency distributions of seven-day price movements supplied by the Exchange for each proposed cross-rate option and the experience with existing foreign currency options, that the Exchange's proposed margin levels will result in adequate coverage for cross-rate currencies. Nevertheless, because the cross-rate options are new products, and the volatility in the underlying currencies can change significantly, the Commission is approving SR-PHLX-91-03 for a one year period. During the one year period the Commission expects the PHLX to monitor the adequacy of margin levels for cross-rate options to ensure that the required margin remains appropriate in view of the volatility of the underlying instrument.²⁶

currency options must be smaller to be consistent with existing limits for foreign currency options.

²³ See Securities Exchange Act Release No. 22469 (September 26, 1985), 50 FR 40633.

²⁴ The initial margin requirements for foreign currency options (except the Canadian dollar) are uniform at 100% of options premium plus 4% of the value of the underlying currency with an adjustment for out-of-the-money options not to be less than 100% of options premium plus 3/4% of the value of the underlying currency.

²⁵ See Margin Coverage Letter, *supra* note 13.

²⁶ This review should include an analysis of the margin adequacy for 14-day price movements and for episodic periods of short term volatility spikes (i.e., kurtosis). The Phlx should provide the review along with a proposed rule change to establish new

Continued

Fifth, the Commission finds that it is appropriate and consistent with the Act to amend PHLX Rule 722(c)(2)(J) to provide that the forms of margin specified in the Regulations of the FRB will suffice as an appropriate margin deposit for cross-rate options. In addition, the Commission believes it is consistent with the Act to permit investors to utilize Exchange-approved letters of credit to satisfy margin requirements. Because U.S. dollar-denominated foreign currency options and cross-rate options are virtually identical, except that the trading currency is not U.S. dollars for cross-rate options, the Commission believes it is appropriate to apply the same margin deposit requirements to both types of foreign currency options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule changes (SR-PHLX-90-12 and SR-PHLX-91-23) relating to the listing and trading of cross-rate currency options on the PHLX be, and hereby are, approved,²⁸ and that SR-PHLX-91-03 be approved for a period of one year.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27492 Filed 11-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18378; File No. 812-7666]

Freedom Investment Trust

Correction

In Federal Register Document No. 91-26369 beginning on page 56260 for Friday, November 1, 1991, the release number for File No. 812-7666 was incorrectly stated as IC-18377. The correct number is IC-18378.

Dated: November 7, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27493 Filed 11-14-91; 8:45 am]

BILLING CODE 8010-01-M

(or the same) margin levels to the Commission nine months from the date of this order.

²⁷ 15 U.S.C. 78s(b)(2) (1982).

²⁸ The listing of any additional cross-rate currency options or any material change in the contract terms of an existing product will constitute a proposed rule change under Section 19(b)(1) of the Act and must be filed with the Commission for approval.

²⁹ 17 CFR 200.30-3(a)(12) (1989).

[Release No. IC-18400; File No. 813-86]

Smith Barney L.P. ESC-1 and Smith Barney Investment, Inc., Notice of Application

Correction

The release number for this application, File No. 813-86, was incorrectly stated as IC-18379. The correct number is IC-18400. This application was published as Federal Register Document No. 91-26420. It appeared on page 56265 on Friday, November 1, 1991.

Dated: November 7, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27494 Filed 11-14-91; 8:45 am]

BILLING CODE 8100-01-M

(to include the naming of Working Group Chairs or Co-Chairs); to formulate the anticipated output from each Working Group, and to discuss other items of the pre-Conference agenda.

Mr. Kenneth Bleakley, Senior Deputy Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State, will chair the meeting.

Members of the general public may attend the meeting and join in the formation of the Working Groups, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Mr. Daniel E. Goodspeed, room 5310-CIP, Department of State, Washington, DC 20520; telephone (202) 647-7847. They must provide Mr. Goodspeed with their name, title, company name, social security number, and date of birth. All attendees must use the "C" street entrance to the building.

Dated: November 7, 1991.

Daniel E. Goodspeed,

Counselor, Bureau of International Communications and Information Policy.

[FR Doc. 91-27528 Filed 11-14-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Air Alpha, Inc.

AGENCY: Department of Transportation.
ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91-11-7, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Air Alpha, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment 1 to

the order. Responses shall be filed no later than November 18, 1991.

FOR FURTHER INFORMATION CONTACT:

Ms. Megan C. Marshall, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4877.

Dated: November 7, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-27547 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in meeting location and agenda.

SUMMARY: The FAA is issuing this notice to advise the public of a change in location of, and in addition to the agenda for, the meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 21, 1991, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration Auditorium, Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125.

FOR FURTHER INFORMATION CONTACT:

Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a change of location for the November 21, 1991, meeting of the Emergency Evacuation Subcommittee from the Civil Aeromedical Institute to the Auditorium at the Federal Aviation Administration Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125. Also, additional items are being added to the agenda for the meeting. A notice of meeting was first issued on October 29, 1991 (56 FR 56539; November 5, 1991). The agenda for this meeting will continue to include:

- A status report by the Performance Standards Working Group.
- A discussion of hazard analysis.
- An emergency evacuation video.

• Future activities.

In addition, the agenda will include:

- A briefing on the MD-11 emergency evacuation demonstration held on October 26, 1991.

- A discussion of a new FAA tasking to the Subcommittee to develop a revised procedure for emergency demonstration testing aimed at reducing the risk of injury to test participants.

- Development of a plan of action and milestones for the Subcommittee, including proposed tasks and working group assignments for this priority effort.

Attendance is open to the interested public, but will be limited to the space available. The public must have made arrangements by November 7, 1991, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on November 8, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-27481 Filed 11-14-91, 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

American Overseas Research Centers; Request for Proposal

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposal.

SUMMARY: The Bureau of Educational and Cultural Affairs seeks applications for financial assistance from American overseas research centers (ORCs). The authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (Fulbright-Hays Act). Through its support of ORCs, USIA seeks to enhance its mission of achieving long-term mutual understanding and mutual exchange of scholarly information and knowledge between the people of the United States and people of other countries.

DATES: Proposals must be received at the U.S. Information Agency by 5 p.m. EST Thursday, January 9, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 9, 1991, but received at a later date. It is the responsibility of each applicant to

ensure that proposals are received by the above deadline.

ADDRESS: The original and ten copies (all with original signatures and date) of the completed application, should be submitted to: U.S. Information Agency, American Overseas Research Centers, Office of the Executive Director, E/X, Room 336, 301 4th Street, SW., Washington, DC 20547.

FOR APPLICATION MATERIAL AND ADDITIONAL INFORMATION (BUDGET GUIDANCE, ETC.) CONTACT:

(Europe) Mr. Ted Kniker (AEE), Academic Exchange Programs Division, Europe Branch, (202) 619-4420.

(North Africa/Near East/South Asia) Mr. Michael Graham (E/AEN), Academic Exchange Programs Division, Near East/South Asia Branch, (202) 619-5368.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview. For this competition, an ORC is defined as a non-profit, independent U.S. institution of higher education and research, affiliated with or accredited by relevant recognized higher education bodies in the U.S. (e.g., American Schools of Oriental Research, Council for American Overseas Research Centers, Middle East Studies Association of North America).

An ORC may be a free-standing organization, independent of any other group or body, or may comprise a consortium of U.S. colleges, universities, museums and libraries. Applicants must demonstrate capability in facilitating advanced research abroad in the social sciences (not only archeological research) by both U.S. and foreign scholars and students; maintain a physical educational facility and full-time staff representation overseas; show a record of achievement in engaging the participation of all relevant segments of the local scholarly community; demonstrate mechanisms for active, ongoing non-Federal fund-raising; demonstrate capability in administering fellowships for advanced scholarly research abroad by U.S. scholars and students; and be actively undertaking innovative programs that further research, preferably collaborative research, with foreign scholars, in the social sciences and humanities.

Guidelines: The competition is limited to selected countries which represent USIA's geographic priorities for development of academic exchange relationships through overseas research centers. Subject to the availability of funding, grants may be awarded in

Fiscal Year 1992. Applicants may request funding for two years, but are requested to present two one-year budgets.

The Agency will review performance at the conclusion of the first year of the grant, and pending availability of funds, may extend the grant for one year without requesting a new proposal. The Agency will consider grants for the following geographic areas:

- A. Europe—Cyprus, Turkey.
- B. North Africa—Egypt.
- C. Near East—Jordan, Yemen, Israel.
- D. South Asia—India.

Restrictions: Proposals for feasibility studies to plan new ORCs will not be considered.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein. Ineligible proposals will not be considered for funding. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All proposals will also be reviewed by the Office of General Counsel.

The Associate Director for Educational and Cultural Affairs identifies and approves potential grant recipients. Final technical authority for awarding a grant resides with the Office of Contracts.

Proposal requirements are described below:

1. A cover sheet with the name of the institution, U.S. and overseas project directors, addresses, telephone and fax numbers and major field(s) of the project (e.g., Middle Eastern studies). Applicants are required to answer all questions on the cover sheet.

2. An executive summary or abstract of the proposal not to exceed two double-spaced pages.

3. A Narrative not to exceed 10 double-spaced pages, including evidence of institutional standing and academic quality, established record and achievements of the ORC, clear statement of goals and objectives for USIA-supported activities and the means to accomplish the objectives, justification of intellectual or institutional importance of programs, research output, and scholarly services; description of the nature of institutional and individual membership, and governing structure; a sampling of past research output; evidence of the relationship of the ORC to host country academic environment and plans for expanding local academic ties; a statement of how exchange-of-persons programs for which USIA funding is requested will be implemented and how

participants are evaluated and selected; clear identification of the program innovation for which funding is being sought; a statement of how the ORC will evaluate activities supported by USIA; a summary of USIA-supported activities in the most recent year.

4. Financial management data outlining the total ORC budget, detailing expenditures and sources from which funds are anticipated. (Detailed information concerning budget format and eligible and ineligible items is included in the financial assistance application guidelines sent by USIA.)

5. Appendices: (a) Copy of charter, bylaws and articles of incorporation; (b) list of board of directors, or similar body, and officers; (c) vita of U.S. and overseas project directors not to exceed two pages each; (d) list of member institutions; (e) sources and amounts of Federal funds received in most recent fiscal year; (f) sources and amounts of non-Federal funds received in most recent fiscal year; (g) copy of fellowship application; (h) copy of fellowship publicity; (i) list of recipients of USIA-sponsored fellowships in most recent three-year period, including academic fields and research topics; (j) a list of foreign scholars, and their projects, who have worked in collaboration with the ORC.

Review Criteria: Applications for this competition will be reviewed according to the following criteria and funding will be allocated on the basis of a panel's judgment regarding the degree to which these criteria are met:

1. Quality of program plan and adherence to criteria and conditions described above.

2. Reasonableness, feasibility, and flexibility of objectives. Proposals should clearly demonstrate how the ORC will meet its objectives.

3. Multiplier effect/impact. A particular priority is that proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual scholarly linkages for collaborative research and graduate education in host country.

4. Value to U.S. binational relations. The potential impact and significance of the ORC's operations in the host country and in the region.

5. Cost effectiveness. Overhead and administrative components of grants, including salaries and honoraria, should be kept as low as possible, and should not exceed 20% of the total grant.

6. Cost-sharing. Proposals should maximize cost-sharing through non-Federal support.

7. Potential for program excellence and/or track record. Relevant evaluation results of previous projects are part of this assessment.

8. Innovativeness of the program for which funding is sought.

9. Promise of the general advancement of U.S. scholarly research abroad.

10. Evidence of strong mutual benefits to the U.S. and foreign institutions and individuals involved.

11. Evidence of strong commitment by U.S. participating and member institutions.

Note: Inasmuch as each ORC is competing against all the others in the pool of applicants, it is possible that not all will be successful in receiving funding and more likely still that the full amount requested will not be awarded. Some grants may only be made for one year in order to redistribute the future pool of applicants more evenly over a two-year cycle of competitions.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review of full proposals on or about May 15, 1992. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: November 8, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FIR Doc. 91-27527 Filed 11-14-91; 8:45 am]

BILLING CODE 8230-01-M

Public and Private Non-Profit Organizations In Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private nonprofit organizations in support of five projects that have been initiated by E/P. Interested applicants are urged to read the complete **Federal Register** announcement before addressing

inquiries to the Office or submitting their proposals.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. e.s.t. on Friday, January 10, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 10, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after April 15, 1992.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Office of the Executive Director (E/X), Attn: Citizen Exchanges—Initiatives, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547. To facilitate the processing of your request, please include the name of the appropriate USIA Program Officer, as identified on each announcement, on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to nonprofit institutions, increased private sector commitment to and involvement in international exchanges. (All international participants will be nominated by USIS personnel overseas and selected by USIA.) Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Awarding of any and all grants is contingent upon the availability of funds.

Summary of Initiative Award Program Ideas

Regional Project on Drug Education and Public Awareness: Europe

The Office of Citizen Exchanges (E/P) of the United States Information Agency is interested in supporting the development of a three-week study project that will bring 13 senior level narcotics abuse prevention specialists from Europe to the U.S. for an intensive exchange with their U.S. counterparts. Selected European countries with major narcotics abuse problems should be considered for this program.

The program should explore and compare techniques used to design, develop and implement effective drug abuse education and public awareness programs. Concurrently, the participants would discuss the related subject of AIDS spread by addicts sharing needles, and programs designed to counter this. The project should underline the cooperation there is in all participating countries between central and local governments and private organizations such as volunteer groups, churches and schools.

Participants will be selected by USIS representatives in those countries which wish to be involved in this project. The project will be designed and executed by a U.S. not-for-profit institution which has experience in developing, implementing and monitoring drug abuser education, prevention and awareness programs. One of the qualities which USIA will seek in applications is that of close involvement of all sectors (governments, schools, churches, hospitals, volunteer groups, etc.), in the community. The program should include travel to several locations in the U.S., and should include a stay in Washington, DC where the topic of national and international coordination of drug abuse is addressed, and where the city itself provides an opportunity for the visitors to see first hand the profound dimensions and impact on Washington of the narcotics abuse and AIDS problems.

The E/P Program Officer for this project is Robert McLaughlin.

Regional Project on Drug Education and Public Awareness: North Africa, the Near East and South Asia

The Office of Citizen Exchanges (E/P) of the United States Information Agency is interested in supporting the development of a three-week study project that will bring 8 to 10 senior level drug abuse prevention specialists from North Africa, the Near East and South Asia (NEA) to the U.S. for an intensive exchange with U.S. counterparts.

The program should explore and compare techniques used to design, develop, and implement effective drug abuse education and public awareness programs. The project should also illustrate the formal and informal role that public and private organizations play in addressing this issue.

Participants will be selected by USIS representatives in participating countries. The program design will be conceived and executed by a U.S. not-for-profit institution which has experience in developing, implementing and monitoring drug abuse education,

prevention and awareness programs. The program should include travel to several locations in the U.S., and should include a stay in Washington, DC, where the topic of national and international coordination of drug abuse prevention efforts are addressed. The project should be scheduled for spring or early summer 1992.

The E/P Program Officer for this project is Michael Weider.

Internship Project on Implementation of Drug Abuse Prevention and Rehabilitation Programs: Africa

The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes development of an internship program to expose African delegates to community-based drug abuse prevention and rehabilitation programs. The project would provide a practical experience to demonstrate strategies to design, implement and evaluate education and treatment programs. The grantee institution would organize internships for 6-8 African delegates at local public and private sector agencies. The 4-6 month internship and related activities would examine outreach programs and other initiatives to promote public awareness and deliver treatment using limited resources. The program would emphasize cooperative efforts involving community leaders, voluntary agencies, private institutions, business and government to address the effects of drug abuse.

A U.S. not-for-profit institution will design and execute the program. The institution should demonstrate extensive experience and success in coordinating international exchange programs for senior level foreign visitors. The institution must also demonstrate substantive working relationships with U.S. public and private sector organizations responsible for addressing drug abuse prevention and rehabilitation issues. The participants will be nominated by overseas personnel of the United States Information Service (USIS) and selected by USIA.

The E/P Program Officer for this project is Stephen Taylor.

Juvenile Justice and Children's Rights in Latin America

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes an exchange program for up to four Brazilian and six Spanish-speaking government officials, social activists, academics and judges. The program will be designed to explore a series of human services essential for the juvenile

justice system and the legal protection of children. The program would consist of two two-week programs (one for Brazilian participants and one for Spanish-speaking participants), providing an intensive overview of children's rights in the United States and the interplay between the judicial system and state social services, child advocacy groups, etc.

A U.S. nonprofit institution would design and execute the program and select the American speakers. The institution should demonstrate extensive experience and success in coordinating international exchange programs for Latin American visitors. The participants would be nominated by United States Information Service personnel in Latin America and selected by the United States Information Agency.

The E/P program Officer for this project is Sandra Wyatt.

Employing and Educating Individuals With Disabilities; a Mainstreaming Program for East Asia

The Office of Citizen Exchanges will consider applications from non-profit institutions for a grant to conduct a substantive program for an incoming delegation of up to 10 health care workers, government officials and educators from selected countries in East Asia, responsible for the education, treatment and employment of individuals with disabilities. This two-week, multi-site study tour will focus upon an examination of American practices of mainstream educational and employment opportunities for citizens with disabilities and will expose the delegation to the legal framework and human rights guarantees for these individuals.

The program will include a short Washington, DC component as well as lengthier visits to outstanding programs for individuals with disabilities, including a combination of training facilities and at-home educational and employment settings. Institutional linkages will be facilitated by a ten-day follow-up visit of two to three American specialists on disability issues to East Asia within six months of the conclusion of the American-based program.

The E/P Program Officer for this project is Hugh Ivory.

Funding and Budget Requirements for all Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and

in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total	\$	\$	\$

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116-0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct and indirect costs). USIA-funded administrative costs are limited to 25 (twenty-five) per cent of the total funds requested. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to \$60,000 of USIA support, and their budget submissions should not exceed this amount. (Awarding of any and all grants is contingent upon the availability of funds.)

Application Requirements

Detailed concept papers and application materials may be obtained by writing to: The Office of Citizen Exchanges (E/P), United States Information Agency, Room 216, 301 4th Street, SW., Washington, DC 20547.

Attention: (Name of the appropriate E/P Program Officer).

Inquiries concerning technical requirements are welcome.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish; how it is consistent with the purposes of the USIA award program; and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules and proposed itineraries, who the participants will be, where they will come from and how they will be selected.

3. A statement of what follow-up activities are proposed; how the project will be evaluated; what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA-1279 and IA-1280.

6. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

8. For proposals requesting \$100,000 or more, Certification for Contracts, Grants, and Cooperative Agreements, Form M/KG-13.

9. For proposals requesting \$100,000 or more, Disclosure of Lobbying Activities (OMB #0348-0046).

Note: All required forms will be provided with the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. Institution Reputation/Ability/Evaluations

Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel

Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. Program Planning

Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. Cross-Cultural Sensitivity/Area Expertise

Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. Ability to Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program's objectives.

8. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 15, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 25, 1991.

William Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-27526 Filed 11-14-91; 8:45 am]

BILLING CODE 8230-01-M

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer. [FR Doc. 91-27457 Filed 11-14-91; 8:45 am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**Implementation of the Accelerated Tariff Elimination Provision in the United States-Canada Free-Trade Agreement**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a third and final opportunity for filing petitions for accelerated tariff elimination under the United States-Canada Free-Trade Agreement (FTA), and a change in the procedure for filing.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (FTA Implementation Act) grants the President, subject to the consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice opens a third and final cycle of petitions for accelerated tariff elimination and modifies the procedure for filing petitions. The closing date for filing petitions is January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Office of North American Affairs, Office of the U.S. Trade Representative, room 501, 600 17th Street, NW, Washington, DC 20506, Mr. P. Claude Burcky, telephone (202) 395-3412.

Background

A procedure for filing petitions for accelerated tariff elimination under the FTA was issued in a *Federal Register* notice of January 23, 1988, Volume 54, Number 13, at pages 3175 and 3176.

Based upon experience gained in the 1989 and 1990 petition cycles, and particularly the inaccurate or incomplete information contained in petitions with respect to the tariff classification of products being petitioned, this notice further modifies the procedure which

DEPARTMENT OF THE TREASURY**Public Information Collection Requirements Submitted to OMB for Review**

November 8, 1991.

The Department of the 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.

Internal Revenue Service

OMB Number: 1545-1086.

Form Number: IRS Form 8725.

Tyue of Review: Extension.

Title: Excise Tax on Greenmail.

Description: Form 8725 is used by persons who receive "greenmail" to compute and pay the excise tax on greenmail imposed under section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 12.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hrs., 30 min.

Learning about the law or the form—35 min.

Preparing and sending the form to IRS—43 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Reporting Burden: 82 hours.

was established in the notice of January 23, 1989.

I. Articles Which May Be Petitioned

Petitions for accelerated tariff elimination may be filed only for articles for which the duty is currently scheduled in annex 401.2 A and B of the FTA, as modified, for elimination after January 1, 1983.

USTR reserves the right to reject petitions concerning articles that were considered for accelerated duty elimination in the first two petition cycles unless conclusive evidence is presented by the petitioner of a significant change in circumstances since the prior consideration.

II. Format of Petitions

A standardized petition format, which facilitates processing and review, and the elements of information to be contained in a petition, are shown in the annex to this notice. In order to be considered, petitions for accelerated tariff reductions should conform to the standard format and contain all essential data elements.

Data elements 1 through 11 listed in sections A and B of the petition format are essential. Petitioners should also provide as much of the information requested in section C of the format as is available to them.

If a submission contains business confidential material, the specific material must be so identified in order to receive confidential treatment. In such cases, both a non-confidential and a business confidential version of the petition, each clearly marked as to its status, must be submitted. None of the information provided in sections A and B of the petition should be designated business confidential.

A copy of the petition format and this notice may be obtained from the Office of North American Affairs, Office of the U.S. Trade Representative (USTR), room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-3412.

III. General Instructions

1. One product per petition. Each petition may request accelerated tariff elimination for a single product only. For this purpose, "single product" means an 8-digit tariff subheading or, if the petitioner is not requesting acceleration of an entire 8-digit tariff subheading, a single specified product within an 8-digit tariff subheading. All information contained in a petition must pertain solely to the single product that is the subject of the petition. Petitions requesting acceleration on more than one product cannot be considered.

2. Petitioner/product relationship (data element 5). At least one item in data element 5 must be checked. If either item "e" or "j" is checked, specify the relationship or interest that the petitioner has in the product.

3. Product description (data element 6). Petitions for acceleration of an entire 8-digit tariff subheading must provide at least a general description sufficient to identify the product coverage of the 8-digit subheading.

Petitions for acceleration of a single product within an 8-digit subheading should provide:

a. A full and complete description of the article;

b. The article's principal use in the United States;

c. The Article's commercial, common, or technical name or designation;

d. Illustrative literature;

e. The relative quantity by weight of each component material for articles composed of two or more materials;

f. Chemical analysis, flow charts, CAS number, etc.;

g. Any other information that may assist in determining the appropriate tariff classification of the article;

h. A statement of the reason(s) the petitioner believes that the article is classified in the 8-digit tariff subheading which the petitioner has entered in data element 7 of the petition (e.g., outstanding classification ruling from Customs or a classification by Customs on liquidated entries of the article in question); and

i. A copy of any rulings issued by the U.S. Customs Service or the appropriate authorities in the Government of Canada specifying the classification of the petitioned product in the Harmonized Tariff Schedule of the United States or the Customs Tariff of Canada.

Petitions for single products within an 8-digit subheading not providing the above information cannot be considered. Brand names or trademarks are not acceptable as product descriptions for this purpose and their use may result in rejection of the petition.

4. 8-digit tariff subheadings (data element 7). Petitions for acceleration of tariff elimination under both the U.S. and Canadian tariff schedules must provide the correct applicable 8-digit tariff subheading number for each of the two tariff schedules. If acceleration is requested under only one of the tariff schedules, the appropriate tariff schedule must be identified and the applicable 8-digit subheading in that schedule must be provided and, if known, should also be provided for the other schedule. Not more than one 8-

digit subheading in each tariff schedule should be listed in a petition.

Commodity numbers contained in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, cannot be substituted for the number of the 8-digit tariff subheading in either the United States or Canadian tariff schedules. Petitions using Schedule B commodity numbers for this purpose cannot be considered.

5. Supplemental information (Section D). This section of the petition should be used to provide information supplementing that provided in data elements 1 through 17 (specify the relevant data element(s) being supplemented), or any other relevant information that may assist in consideration of the petition.

6. Submission of petitions. Petitions should be type-written and submitted in 10 copies at the earliest possible date, but not later than January 17, 1991, to: Office of North American Affairs, Office of the U.S. Trade Representative, room 501, 600 17th Street, NW., Washington, DC 20506, ATTN: Mr. P. Claude Burcky.

Petitions received after January 17, 1992, cannot be considered.

Given our negotiating schedule, it must be possible in the petition review process to determine not later than January 30, 1992, the correct classification of specific products which are petitioned within 8-digit tariff subheadings.

Consequently, petitions requesting acceleration on specific products in an 8-digit subheading should be submitted at the earliest possible date. Submission of such petitions after January 1, 1992 will carry a strong risk of nonacceptance because of the inability to determine tariff classification in the time available on the basis of information contained in the petition.

IV. Consideration of Petitions

All petitions received by January 17, 1992, and containing complete and correct information as required in this notice will be reviewed and a decision made as to which articles will be proposed to the Government of Canada for possible accelerated tariff elimination.

Petitions for articles on which the duty is currently scheduled for elimination on or before January 1, 1993, in Annex 401.2 of the United States-Canada Free-Trade Agreement, as modified, cannot be considered.

Petitions not containing complete and accurate information required in data elements 1 through 11 of sections A and B of the petition cannot be considered.

Petitions for products considered in the 1989 or 1990 petition cycles cannot be considered unless the petitioner demonstrates a significant change in circumstances since the last consideration. Products considered in the first two cycles are listed in the **Federal Register** notices of July 17, 1989, Volume 54, Number 135, at pages 29959 through 29971 and October 5, 1990, Volume 55, Number 194 at pages 40964 through 40973. Information on whether a product was considered in the first two cycles also may be obtained from:

The Office of the U.S. Trade

Representative, (202) 395-3412,
The U.S. Department of Commerce, (202)
377-3101.

Normally, the accelerated elimination of tariffs between the United States and Canada is pursued on a reciprocal basis. Petitions containing requests for the accelerated elimination of Canadian tariffs will be treated as applying equally to corresponding U.S. tariff treatment, and vice versa.

Petitions to the Government of Canada

Information on the procedures for submitting requests to the Government of Canada is available from the Interdepartmental Committee on FTA Acceleration, 140 O'Connor Street, 14th Floor, Ottawa, Ontario, Canada K1A 0G5.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

Annex A—Petition To Accelerate the Removal of Tariffs Under the United States-Canada Free-Trade Agreement

Section A. Petitioner Identification

1. Petitioner: _____
2. Address: _____

3. Contact person: _____

4. Telephone number: _____

5. Petitioner/product relationship:

- a. Producer in the United States
- b. Importer in the United States
- c. Exporter in the United States
- d. Consumer in the United States
- e. Other, in the United States

Specify: _____

- f. Producer in Canada
- g. Importer in Canada
- h. Exporter in Canada
- i. Consumer in Canada
- j. Other in Canada

Specify: _____

Section B. Product Identification and Tariff Information

6. Product description: _____

(Important: See paragraph 3 of General Instructions. Supplement in section D if necessary.)

7. The product is classified in the following 8-digit tariff subheading:

- a. in the Harmonized Tariff Schedule of the United States (1991)
- b. in the Customs Tariff of Canada
- c. This petition:
- a. covers all products in the U.S. 8 digit tariff subheading.
- b. does not cover all products in the U.S. 8-digit tariff subheading.
- c. covers all products in the Canadian 8-digit tariff subheading.
- d. does not cover all products in the Canadian 8-digit tariff subheading.

(Important: If either item b or d is checked, the information required in paragraph 3 of the General Instructions for product descriptions of single products within an 8-digit subheading must be provided with this petition.)

9. Under the Free-Trade Agreement, the current rate of duty in the tariff schedule of:

- a. The United States is _____.
- b. Canada is _____.

10. Accelerated removal is requested for:

- a. the United States duty
- b. the Canadian duty

11. Petitioner requests elimination of the tariff/s:

- a. immediately without further staging.
- b. with accelerated staging.

Specify: _____

Section C. Economic and Statistical Information

12. Exports in 1989-1991 by the petitioner, and projected exports by the petitioner, in the 12-month period following implementation of petitioner's request:

a. From the United States to Canada—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

b. From Canada to the United States—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

Projected for the 12-month period following duty removal:

13. Imports in 1989-1991 by the petitioner, and projected imports by the petitioner in the 12-month period following implementation of petitioner's request:

a. From Canada into the United States—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

b. From the United States into Canada—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

Projected for the 12-month period following duty removal:

14. Production by the petitioner:

a. In the United States—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

b. In Canada—

Year	Quantity	Value
1989	_____	_____
1990	_____	_____
1991	_____	_____

15. Names and address of known principal producers in the United States:

a. _____
b. _____
c. _____

16. Petitioner's 1990 share of the market in:

a. the United States was ____%.

b. Canada was ____%.

Section D. Supplemental Information

(Use additional pages as necessary.)

Signature of person filing the petition:

Title or position:

Date: _____

[FR Doc. 91-27686 Filed 11-13-91; 2:54 pm]

BILLING CODE 3190-01-M

Sunshine Act Meetings

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 DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, November 12, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Application of Key Bank of Maine, Augusta, Maine, for consent to purchase certain assets of and assume the liability to pay deposits made in twelve branches of Casco Northern Bank, National Association, Portland, Maine, and for consent to establish the twelve branches of Casco Northern Bank, National Association as branches of Key Bank of Maine.

Reports of the Office of Inspector General: Audit Report re:

Houston Consolidated Office, Cost Center—405 (Memo dated September 27, 1991)

Audit Report re:

Northwest Federal Savings Bank, Spencer, Iowa, Assistance Agreement, Case Number C-382c (Memo dated September 18, 1991)

Audit Report re:

The Peoples Bank & Trust Company, Natchitoches, La., Natchitoches, Louisiana (4283) (Memo dated October 11, 1991)

Audit Report re:

Merchants Bank of Boston, a Co-operative Bank, Boston, Massachusetts (4202) (Memo dated September 10, 1991)

Audit Report re:

First National Bank of Corpus Christi, Corpus Christi, Texas (4256) (Memo dated September 17, 1991)

Audit Report re:

United Bank of Waco, National Association, Waco, Texas (4255) (Memo dated September 18, 1991)

Audit Report re:

Audit of the Management and Control of Collateral, Addison Consolidated Office (Memo dated October 10, 1991)

Audit Report re:

Audit Report on the Management and Control of Owned Real Estate, Bossier City Consolidated Office (Memo dated October 11, 1991)

Audit Report re:

Audit of Contracting Procedures-DOL Service Procurements, Washington, D.C. (Memo dated October 9, 1991)

Audit Report re:

Information Systems Audit of NFC, Payroll/Personnel System Security (Memo dated October 11, 1991)

Audit Report re:

Audit on Travel Voucher Processing Within Division of Liquidation, New York Regional Office (Memo dated September 30, 1991)

Audit Report re:

Audit on Travel Voucher Processing Within Office of Personnel Management (Memo dated September 12, 1991)

Audit Report re:

Report on the Review of the FDIC's Legal Division (Memo dated September 30, 1991)

Personnel Matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: November 12, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-27643 Filed 11-13-91; 11:26 am]

BILLING CODE 6714-0-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., November 21, 1991.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573-0001.

STATUS: Open.

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

MATTER(S) TO BE CONSIDERED:

1. Docket No. 91-20—*Exemption of Certain Marine Terminal Services Arrangements—Consideration of Comments on Proposed Rule.*

CONTACT PERSON FOR MORE INFORMATION:

Joseph C. Polking, Secretary, (202) 523-5725. Joseph C. Polking, Secretary.

[FR Doc. 91-27707 Filed 11-13-91; 3:23 pm]

BILLING CODE 6730-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, November 19, 1991 to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the Discussion Agenda.

• *Quarterly Report of Actions Taken Under Delegated Authority by the Committee on Management and Disposition of Assets and the Senior Committee on Management and Disposition of Assets, April 1, 1991—June 30, 1991.*

• *Disposition of minutes of previous meetings.*

• *Memorandum re: Proposed delegations of authority to the Inspector General to disclose information in accordance with the Privacy Act of 1974, to promulgate policies, procedures and regulations, and to redelegate authority within the OIG related to requests for such information in OIG files.*

• *Memorandum re: Proposed modifications to the delegations of authority to Settlement/Workout Asset Teams approved by notational vote on August 26, 1991 to include a senior/level RTC attorney as a member of the team, and to extend to the private lawyer or law firm acting as a member of the team the RTC's corporate indemnity for professional services.*

Discussion Agenda

• *Memorandum re: Proposed sale of mortgage loans and real estate owned to Real Estate Investment Trusts and other multiple investor funds.*

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB06

Recreation Assistance Authorizations

Correction

In notice document 91-24032 beginning on page 51260, in the issue of Thursday, October 10, 1991 make the following correction:

On the same page, in the first column, in "DATES", in the second line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Stanford University's Energy Modeling Forum

Correction

In notice document 91-6235 beginning on page 11211 in the issue of Friday, March 15, 1991, make the following correction:

On page 11212, in the first column, in the file line at the end of the document, "FR Doc. 91-6325" should read "FR Doc. 91-6235".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Drug Use and Alcohol Abuse Prevention Demonstration Grants in the Community Partnership Study Program

Correction

In notice document 91-25054 beginning on page 52037 in the issue of Thursday,

October 17, 1991, make the following correction:

On page 52038, in the third column, in the first full paragraph, in the third line from the bottom, insert "not" after "may".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0332]

Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities; Final Policy; Correction

Correction

In notice document 91-23047 appearing on page 48570 in the issue of Wednesday, September 25, 1991, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6890

[ID-943-4214-10; ID-7322]

Withdrawal of Public Lands for Protection of the Bruneau and Jarbidge River Systems; Idaho

Correction

In rule document 91-24616 beginning on page 51334 in the issue of Friday, October 11, 1991, make the following corrections:

1. On page 41334, in the third column:
 - a. In T. 8 S., R. 6 E., in Sec. 13, in the first line, insert "NE $\frac{1}{4}$ SW $\frac{1}{4}$," after "NW $\frac{1}{4}$ NW $\frac{1}{4}$ ".
 - b. In T. 10 S., R. 7 E., in Sec. 26, insert "S $\frac{1}{2}$ NW $\frac{1}{4}$," before "and SW $\frac{1}{4}$ ".
2. On page 41335, in the second column:
 - a. In T. 14 S., R. 6 E., in Sec. 24, in the first line, remove the comma after the second "E $\frac{1}{2}$ ".
 - b. In T. 15 S., R. 7 E., in Sec. 32, in the first line, insert "N $\frac{1}{2}$ SW $\frac{1}{4}$," after "S $\frac{1}{2}$ NW $\frac{1}{4}$ ".

BILLING CODE 1505-01-D

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-4214-10; CACA 28855]

Notice of Proposed Withdrawal; California

Correction

In notice document 91-24959 beginning on page 52052 in the issue of Thursday, October 17, 1991, make the following correction:

On page 52052, in the third column, under T. 14 N., R. 9 E., Sec. 12, "NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ " should read "NW $\frac{1}{4}$, NE $\frac{1}{4}$, and SE $\frac{1}{4}$ ".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-01-4214-10; GP1-375; OR-47602]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 91-23811 beginning on page 50135 in the issue of Thursday, October 3, 1991, make the following correction:

On page 50135, in the third column, under **SUPPLEMENTARY INFORMATION**, in the heading, "Williamett" should read "Willamette".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

SESA Fluorspar Eagle Pass, TX; Negative Determination Regarding Application for Reconsideration

[TA-W-25,051]

Correction

In notice document 91-5934 appearing on page 10575 in the issue of Wednesday, March 13, 1991, the agency heading is corrected to read as set forth above, and in the file line at the end of the document, "FR Doc. 91-5734" should read "FR Doc. 91-5934".

BILLING CODE 1505-01-D

NATIONAL SCIENCE FOUNDATION

**Advisory Committee for Astronomical
Sciences Subcommittee for Long-
Range Planning and Priorities; Meeting**

Correction

In notice document 91-6807 appearing on page 12281 in the issue of Friday, March 22, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-6897" should read "FR Doc. 91-6807".

BILLING CODE 1505-01-D

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DEPARTMENT OF ANTHROPOLOGY

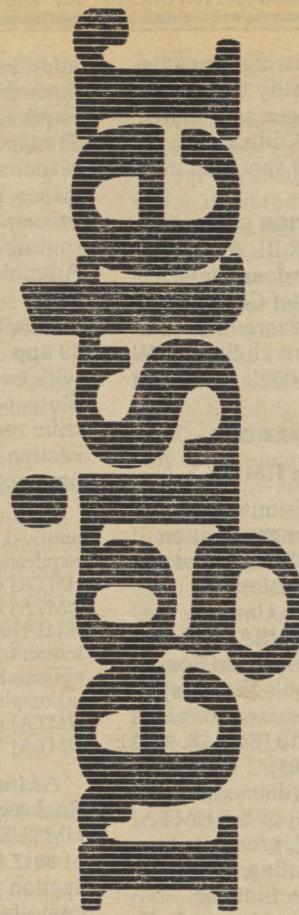
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Friday
November 15, 1991



Part II

Department of Transportation

**Research and Special Programs
Administration**

**Application for Waiver of Preemption
Determination; New York City Fire
Department Regulations for
Transportation of Hazardous Materials;
Notice**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration**

[Docket No. WPDA-1]

Application for a Waiver of Preemption Determination Concerning New York City Fire Department Regulations Governing Pickup/Delivery Transportation of Flammable and Combustible Liquids and Flammable and Compressed Gases

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of New York has applied for an administrative determination waiving preemption, under the Hazardous Materials Transportation Act (HMTA), of certain provisions of New York City Fire Department directives. Those regulatory provisions concern the transportation of flammable and combustible liquids and flammable and compressed gases for pickup or delivery within New York City.

DATES: Comments received on or before December 13, 1991, and rebuttal comments received on or before January 17, 1992, will be considered before an administrative ruling is issued by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (WPDA-1). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Grace Goodman, Esq., Asst. Corporation Counsel, Law Department, The City of New York, 100 Church Street, room 6 F 41, New York, NY 10007; John J. Collins, Esq., ATA Litigation Center, American Trucking Associations, 2200 Mill Road, 6th Floor, Alexandria, VA 22314; and Timothy L. Harker, Esq., The Harker Firm, 5301 Wisconsin Avenue NW., suite 740, Washington, DC 20015. A certification that a copy has been sent to each person must also be included with

the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Goodman and Messrs. Collins and Harker at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590-0001, telephone number 202-368-4400.

SUPPLEMENTARY INFORMATION:**1. Preemption Under the HMTA**

The preemption provisions of the Hazardous Materials Transportation Act (HMTA), 49 app. U.S.C. 1801 *et seq.*, were amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615. The Research and Special Programs Administration's (RSPA's) regulations have been revised to reflect these changes. 56 FR 8616 (Feb. 28, 1991); 56 FR 15510 (Apr. 17, 1991).

With two exceptions (discussed below), Section 105(a)(4) of the HMTA, 49 app. U.S.C. 1811(a)(4), preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as any provision of the HMTA or any regulation under that provision concerning that subject. The "covered subjects" are defined in section 105(a)(4) as:

- (i) The designation, description, and classification of hazardous materials.
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
- (v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

RSPA has issued a Notice of Proposed Rulemaking proposing a specific definition for the term "substantively the same." 56 FR 36992 (Aug. 1, 1991).

In addition, section 105(b)(4) of the HMTA, 49 app. U.S.C. 1804(b)(4),

addresses the preemption standards for hazardous materials highway routing requirements. The Secretary of Transportation has delegated responsibility for those highway routing issues, including the issuance of preemption determinations on highway routing issues to the Federal Highway Administration. 56 FR 31343 (July 10, 1991).

Finally, section 112(a) of the HMTA, 49 app. U.S.C. 1811(a), provides that, with two exceptions discussed below, State, political subdivision and Indian tribe requirements not covered by those section 105 (a) or (b) provisions are preempted if—

(1) Compliance with both the State or political subdivision or Indian Tribe requirement and any requirement of (the HMTA) or of a regulation issued under (the HMTA) is not possible, (or)

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of (the HMTA) or the regulations issued under (the HMTA) * * *.

As indicated in the preamble to the final regulation implementing the HMTUSA preemption provisions, 56 FR at 8617 (Feb. 28, 1991), Congress, in section 112, codified the "dual compliance" and "obstacle" standards which RSPA previously had adopted by regulation and used in issuing its advisory inconsistency rulings.

The two exceptions to preemption referred to above are for: (1) State, local or Indian tribe requirements "otherwise authorized by Federal law" and (2) State, local or Indian tribe requirements for which preemption has been waived by the Secretary of Transportation.

All of the above-described preemption standards are in RSPA's regulations at 49 CFR 107.202.

Congress also provided, in section 112(c) of the HMTA, for issuance of binding preemption determinations to replace the advisory inconsistency rulings previously issued by RSPA. Any directly affected person may apply for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final.

The Secretary of Transportation has delegated authority to issue preemption determinations, except for those concerning highway routing issues, to RSPA. 56 FR 31343 (July 10, 1991). RSPA's Associate Administrator for Hazardous Materials Safety issues those

determinations. RSPA's regulations concerning preemption determinations were issued on February 28, 1991 (56 FR 8616), and are at 49 CFR 107.203-211 and 107.227.

2. Waiver of Preemption

Similarly, Congress provided, in section 112(d) of the HMTA, for Secretarial issuance of waiver of preemption determinations to replace the nonpreemption determinations previously issued by RSPA. Any State or local government or Indian tribe may apply for a waiver of preemption concerning any of its requirements which it acknowledges is preempted by the HMTA.

The Secretary may waive preemption of that requirement upon determining that it: (1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the HMTA or the regulations issued under the HMTA, and (2) does not unreasonably burden commerce. A party to a waiver of preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final.

The Secretary of Transportation has delegated authority to issue waiver of preemption determinations, except for those concerning highway routing issues, to RSPA. 56 FR 31343 (July 10, 1991). RSPA's Associate Administrator for Hazardous Materials Safety issues those determinations. RSPA's regulations concerning waiver of preemption determinations were issued on February 28, 1991 (56 FR 8616) and April 17, 1991 (56 FR 15510), and are at 49 CFR 107.215-227.

In issuing its waiver of preemption determinations under the HMTA, RSPA is guided by the principles enunciated in Executive Order No. 12,612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains several express preemption provisions, which RSPA has implemented through regulations. However, there are statements of policy in that Executive Order which may be relevant to the discretionary decision whether to waive preemption if the two requirements for waiver are met.

3. The Application for a Waiver of Preemption Determination

On October 9, 1991, the City of New York submitted an application for a waiver of preemption determination, which is reproduced in critical part as appendix A to this notice.

Several exhibits were enclosed with the City's application. They are available for examination at, and copies of them are available at no cost from, the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW, 20590-0001, telephone 202-366-4453. The City requirements at issue in this proceeding were determined to be preempted in Inconsistency Ruling 22 (IR-22) (52 FR 46574, Dec. 8, 1987; correction, 52 FR 49107, Dec. 29, 1987) and in the RSPA Administrator's Decision on Appeal (IR-22(A)) (54 FR 26698, June 23, 1989). According to an October 29, 1991 letter from the City to RSPA, on October 18, 1991, in *National Paint & Coatings Ass'n et al. v. City of New York et al.* Index No. CV 84-4525 (ERK), the United States District Court for the Eastern District of New York issued an order confirming that the City has acknowledged preemption of its requirements. That decision is reproduced as appendix B to this notice.

4. Request for Temporary Stay of Preemption

In its application, the City also requested a temporary stay of preemption as to the regulations which are the subject of its application. In its October 29 letter, the City stated that, because the District Judge in the Federal Court litigation had provided for temporary relief for 150 days, RSPA need not rule on the request at this time. However, the City requested notice and an opportunity to renew its request if no determination is issued by March 15, 1992.

Although no request for a temporary stay of preemption is pending at this time, all parties should be aware that there is no authority in the HMTA for the Secretary or RSPA to temporarily stay preemption. The authority to grant such relief lies, if anywhere, with the courts.

5. Public Comment

Comment should be limited to the following issues: (1) Whether the specified City regulations afford an equal or greater level of protection to the public than is afforded by the requirements of the HMTA or regulations issued under the HMTA; (2) whether those requirements do not unreasonably burden commerce, and (3)

whether RSPA should grant the waiver request if it makes affirmative findings on issues (1) and (2).

Persons intending to comment on the application should review the standards and procedures governing the Department's consideration of applications for waiver of preemption determinations found at 49 CFR 107.215-107.225.

Issued in Washington, DC on November 6, 1991.

Alan I. Roberts,
Associate Administrator for Hazardous Materials Safety.

Appendix A—Application of the City of New York for a Waiver of Preemption Determination Concerning New York City Fire Department Regulations Governing Pickup/Delivery Transportation of Flammable and Combustible Liquids and Flammable and Compressed Gases

Before the Associate Administrator for Hazardous Material Safety of the Research and Special Projects Administration of the United States Department of Transportation

Application for a Waiver of Preemption Pursuant to 49 U.S.C. 1811(b) and 49 CFR 107.215 et seq. by the City of New York and Its Fire Department

Dated: October 10, 1991.

O. Peter Sherwood,
Corporation Counsel of the City of New York,
Attorney for Applicant, 100 Church Street,
New York, New York 10007, (212) 788-0963,
Grace Goodman, of Counsel.

Table of Contents

Preliminary Statement

I. Texts of Regulations As To Which Waiver Is Sought.

- A. Regulations establishing capacity limits.
- B. Regulations on tank construction.
- C. Regulations on chassis and combinations to be permitted.
- D. Miscellaneous equipment and handling regulations.
- E. Painting and marking of gasoline trucks.
- F. Truck uses requiring special permission.
- G. Inspection and Permit system.

II. Orders Bearing On The Application.

III. Provisions With Which The Directives Are Inconsistent.

Argument.

IV. The City's Regulations Meet The Standards For Waiver.

A. An Equal or Greater Level of Protection To The Public.

- 1. Capacity Limits.
- 2. Construction factors: steel, thickness, shape baffles.
- 3. Type of chassis: limits on trailers.
- 4. Other equipment and handling rules: Gravity discharge, cylinder restraints; no smoking.
- 5. Painting and Marking of Gasoline Trucks.

6. Emergency Transfers of Product.
7. Inspection and Permits.
- B. No Unreasonable Burden on Commerce.
1. No Protectionist Discrimination.
2. Only Slight Economic Burden.

V. The New York City Regulations Meet the Decision Criteria.

- A. Extent of Cost Increase and Efficiency Decrease Is Slight.
- B. A Rational Basis Exists for These Regulations.
- C. The Rules Achieve Their Stated Purpose.
- D. No Need for Uniformity; No Conflict With Other States.

Conclusion

City of New York, Fire Department's Memorandum in Support of Application for a Waiver of Preemption—Preliminary Statements

The Fire Department of the City of New York ("the Department") hereby applies to the Associate Administrator for Hazardous Materials Safety for a Waiver of Preemption, pursuant to section 112(d) of the Hazardous Materials Transportation Uniform Safety Act of 1990 ("HMTUSA") 49 U.S.C. 1081 et seq., and the regulations in 49 CFR 107.215 et seq. See, Affidavit of William M. Feehan, Exhibit 20 submitted herewith.

The Fire Department acknowledges that certain sections of its regulations that it wishes to continue to enforce are preempted by section 105(a)(4) of the HMTUSA. However, the Department believes that these regulations meet the standards for a waiver of preemption in that they (1) afford an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued thereunder and (2) do not unreasonably burden commerce. This memorandum will discuss each of those standards with respect to each of the sections of the Department's regulations as to which a waiver is sought.

I. Texts of Regulations as to Which Waiver Is Sought

The Fire Department has four "Fire Prevention Directives" ("F.P.Dir.") containing sections for which the Department wishes to obtain waivers at this time. They are: F.P. Dir. 7-74 covering the tank truck transportation of flammable liquids, Exhibit 1; F.P. Dir. 6-76 covering the tank truck transportation of combustible liquids, Exhibit 2; F.P. Dir. 5-63 covering the transportation compressed gases, Exhibit 3; and F.P. Dir. 3-76 covering the transportation by platform truck of cylinders of compressed gases, Exhibit 4.¹

¹ The sections quoted in the text are those for which a Waiver of Preemption is being sought at this time.

A. Regulations Establishing Capacity Limits

1. F.P. Dir. 7-74, sections 4-1, 4-2, 4-3:

4-1. The maximum capacity of the tank shall not exceed 4,000 gallons, plus the five percent (5%) allowance for expansion as permitted by Section 4-3.

4-2. The tank shall be divided into one or more independent compartments, no one of which shall exceed in capacity 320 gallons, except in 3,000 gallon gasoline tanks, compartments up to 500 gallons capacity are permitted, and except in 4,000 gallon gasoline tanks, compartments up to 800 gallons capacity are permitted.

4-3. Each compartment shall be provided with five percent (5%) additional space for thermal expansion during transportation or thermal expansion resulting from fire. A manufacturing tolerance of two percent (2%) additional space is permitted for expansion.

2. F.P. Dir. 6-76, sections 4-1, 4-2:

4-1. The total carrying capacity of the tank shall not exceed 4,400 gallons except that oil such as Numbers 4, 5, and 6 fuel oils may be carried in a tank of not more than 6,500 gallons capacity shall tank full.

4-2. The total capacity of any one compartment shall not exceed eleven hundred (1,100) gallons, except that heavy oils Number 4, 5 and 6 may be carried in a single compartment.

3. F.P. Dir. 5-63, sections 10.1, 10.2, 10.5:

10.2 Liquefied petroleum gases; liquefied chlorine; vinyl chloride or any other gases deemed to be hazardous by the Fire Commissioner shall not be stored, transported or delivered in tank trucks within the city.

There are other sections in these four Directives which the Fire Department believes are not preempted by the HMTUSA and for which, therefore, no waiver need be sought at this time. These are: (a) F.P. Dir. 7-74 section 2, F.P. Dir. 6-76 section 2, and F.P. Dir. 5-63 section 2, each requiring that drivers of trucks carrying these hazardous materials pass a Fire Department examination and receive a Certificate of Fitness; and (b) F.P. Dir. 7-74 section 26-2(a)(b) and section 32; F.P. Dir. 6-76 section 28-3(a)(b)(c); and F.P. Dir. 3-76 section 14-3(b)(c), each containing restrictions on storage rather than transportation of these hazardous materials.

The Certificate of Fitness ("COF") regulations are not preempted pursuant to the HMTUSA's "covered subjects" list, section 105(a)(4)(B). Nor are the COF regulations preempted under section 112(a). When the regulations and certification authorized by the HMTUSA in section 106(b) are in place and the Federal Commercial Motor Vehicle Act has become effective in New York, it may no longer be necessary to enforce the City's own COF rules. Until that time, the City intends to continue to enforce these sections and believes it is not necessary to seek a Waiver of Preemption as to them.

10.5 Gases deemed hazardous pursuant to section 10.2 of these regulations are:

1. Liquefied Petroleum Gases

- a. Butane
- b. Butadiene
- c. Butylene (Butene)
- d. Ethane
- e. Propane
- f. Propylene (Propene)
- g. and the isomers and/or mixtures of the foregoing

2. Acetylene

3. Carbon Monoxide (Liquefied)

4. Chlorine (Liquefied)

5. Cyanogen

6. Cyclopropane

7. Diborane

8. Di, Mono & Tri Methylamines

9. Dimethyl Ether

10. Ethylene

11. Fluorine

12. Hydrogen (Liquefied)

13. Hydrogen Cyanide (Hydrocyanic Acid)

14. Hydrogen Sulfide

15. Methane (Liquefied-LNG)

16. Methyl-Acetylene Propadiene Mixture-Stabilized (Propyns, MAPP GAS, APACHE GAS)

17. Methyl Chloride

18. Methyl-Moroaptan

19. Phosgene

20. Phosphine

21. Vinyl Chloride

22. Vinyl Fluoride

23. Vinyl Methyl Ether

24. Gas Mixtures of the foregoing, or which contain Class "A" poisons.

25. Other Gases which may be deemed to be hazardous by the Fire Commissioner.

B. Regulations on Tank Construction

1. F.P. Dir. 7-74, section 5-1:

5-1. Each tank shall be an all-metal welded rigid structure, elliptical in cross section and constructed of not less than 3/16th inch . . . steel throughout, except that in 4,000 gallon gasoline tanks, the bottom one quarter of the wrapper sheet shall not be less than 0.3125 inch 5/16th inch . . . steel throughout. Interior longitudinal baffle plates to prevent sloshing shall be provided in 4,000 gallon tank compartments.

2. F.P. 6-76, sections 4.2, 5.1, 5-2:

4.2. Vehicles having tanks in excess of 5,500 gallon capacity shall have a baffle or baffles provided to minimize sloshing of product.

5.1. The tank shall be a rigid all-steel structure, open hearth or blue annealed steel throughout. All joints shall be welded.

5.2. All gauges specified in this section shall be U.S. Standard gauge. Tanks of not more than 600 gallons

capacity shall be of 12 gauge shell, 12 gauge head. Tanks of over 600 gallons capacity shall be 10 gauge shell, 10 gauge head.

5.3. Material other than open hearth or blue annealed steels may be used if in thickness and designs that will give tank strengths and rigidities not less than those of the steels described and which have an equal or higher melting point.

C. Regulations on Chassis and Combinations To Be Permitted

1. F.P. Dir. 7-74, section 29-2

29-2. Tank semi-trailer equipment which is a vehicle of the trailer type (upon which is mounted a tank) having one or more axles and two or more wheels so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle, or any vehicle (upon which is mounted a tank) without its own motive power, no part of the weight of which rests on the towing vehicles, but is drawn by a motor vehicle and is known as a full tank trailer, is prohibited.

2. F.P. Dir. 6-76 section 24-1

24-1. The use of a any vehicle (upon which is mounted a tank) without its own motive power, no part of the weight of which rests on the towing vehicle, but is drawn by a motor vehicle and is known as full tank trailer, is prohibited.

3. F.P. Dir. 5-63, section 10.1

10.1. Full type trailers, excepting those not exceeding twelve (12) feet in length and not exceeding a cubical content of seventy-five (75) cubic feet by volume, shall be prohibited for the transportation or delivery of compressed gases in the City of New York. These permitted full trailers shall have their volumetric capacities marked thereon.

Note: A full type trailer is any vehicle without its own motive power, no part of which rests on the towing vehicle but which is drawn by a motor vehicle.

D. Miscellaneous Equipment and Handling Regulations

1. F.P. Dir. 7-74, section 3-1

3-1. [Gasoline] may be discharged by the gravity method only.

2. F.P. Dir. 5-63, section 5.1.2

5.1.2. Cylinders or containers shall be held securely in position by a suitable device or devices which prevent the cylinders or containers from moving about the vehicle while in transit. Cylinders or containers shall not be loaded in any position which would prevent the proper functioning of the safety devices or result in injury to such devices. All cylinders (for gases other than CO₂) having a threaded neck ring for attachment of a protective valve cap

shall have a cap in place during transportation and handling.

3. F.P. Dir. 6-76, section 25-1

25-1. Smoking on a tank truck is prohibited at all times.

4. F.P. Dir. 3-76, section 12

12-1. Smoking on a truck while transporting or delivering any oils or liquids requiring a permit from the Fire Commissioner is prohibited.

E. Painting and Marking of Gasoline Trucks

1. F.P. Dir. 7-74, sections 28-1, 28-2

28-1. The tank body shall be painted red * * * but the chassis, running gear, cab, bonnet or hood of the motor or the wheels may be painted any color suitable to the applicant. Any new or repainted tank shall be painted red in accordance with ANSI-Z53.1-1976 (Safety Color Code for Marking Physical Hazards).

28-2. The words "Gasoline—Danger" shall be displayed on both sides and rear of the Tank in letters of not less than ten (10) inches high by at least one (1) inch stroke and on the front bumper in letters not less than four (4) inches high by at least one-half (1/2) inch stroke. The lettering shall be in white.

F. Truck Uses Requiring Special Permission

1. F.P. Dir. 7-74, 26-2(c)

26-2. Flammable liquids or mixtures shall be delivered only * * * (c) from one tank truck into the cargo or fuel tank of another approved truck in emergency caused by an accident or defective tank truck, providing such transfer is in the interest of public safety and the transfer is made only to vehicles with Fire Department permits or otherwise authorized, and such transfer is authorized by a representative of the Fire Department.

2. F.P. Dir. 6-76, Section 26-3(d)

26-3. A tank truck shall be used to deliver * * * (combustible liquids) only * * * (d) from one tank truck into the cargo or fuel tank of another approved truck in an emergency caused by an accident or defective tank truck, provided that such transfer is in the interest of public safety and the transfer is made only to vehicles with Fire Department permits or otherwise authorized and such transfer is authorized by a representative of the Fire Department.

3. F.P. Dir. 3-76, 14-3(d)

14-3. Platform trucks can be used only as follows: (d) Transfer of product from tanks of an approved platform truck to the cargo or fuel tank of an over the road vehicle shall be made only in an emergency caused by an accident or defective equipment, providing such

transfer is in the interest of public safety and the transfer is made to vehicles with Fire Department permits or otherwise authorized, and such transfer is authorized by a representative of the Fire Department.

G. Inspection and Permit System

1. F.P. Div. 7-74, Sections 1-1, 1-3, 1-4, 1-5, 1-6

1-1. No person, firm or corporation shall transport or deliver for sale, storage or use, within the city any * * * flammable liquid or flammable mixture * * * except in a tank truck or other vehicle for which a permit has been granted by the Fire Commissioner.

1-3. Application for a permit shall be made on forms prescribed by the Fire Commissioner and shall contain such information as he shall require.

1-4. Unless otherwise provided every permit for a tank truck and the renewal thereof, shall be for a period determined by the Fire Commissioner but in no case to exceed one year.

1-5. The permit is revocable and not transferable to a new ownership and in the case of a change of ownership of the truck, the new owner shall obtain a new permit. A fee for each permit shall be paid in accordance with the schedule in section 27-4027 of the Administrative Code (of the City of New York).

1-6. The permit plate and tab shall remain the property of the Fire Department and shall be prominently displayed on the vehicle in accordance with the following:

(a) The metal permit plate furnished by the Fire Department at the time the Fire Department permit is issued shall be securely and conspicuously fastened to the exterior of the cab on the left side or to the extreme forward left side of the tank or running board. No welding or drilling to the tank shall be permitted.

(b) The yearly renewal tab, furnished by the Fire Department, shall be affixed to the lower right side of the Fire Department metal permit plate in accordance with the instructions on the back of the renewal tab.

(c) The Fire Department metal permit plate shall be returned to the Fire Department when tank truck is no longer to be used for the transportation of gasoline or flammable mixtures, etc. in New York City and renewal application is not being made.

2. F.P. Dir. 6-76, Section 1-1, 1-3, 1-4, 1-5, 1-6

1-1. No person, firm or corporation shall transport or deliver for sale, storage or use, within the City, any (combustible liquid) * * * or combustible mixture * * * except in a

tank truck for which a permit has been granted by the Fire Commissioner.

1-3. Application for a permit shall be made on forms prescribed by said Fire Commissioner and shall contain such information as he shall require.

1-4. Unless otherwise provided every permit for a tank truck and renewal thereof, shall be for a period to be determined by the Fire Commissioner, but in no case to exceed one year.

1-5. The permit is revocable and not transferable to a new ownership and in the case of a change of ownership of the truck, the new owner shall obtain a new permit. A fee for each permit shall be paid in accordance with the schedule in Section 27-4027 of the Administrative Code (of the City of New York).

1-6. The permit plate and tab shall remain the property of the Fire Department and shall be prominently displayed on the vehicle in accordance with the following:

(a) The metal plate furnished by the Fire Department at the time the Fire Department permit is issued shall be securely and conspicuously fastened on the rear of the tank truck in the upper one-third of the tank or bucket box but not within 12 inches of the license plate. No welding or drilling to the tank shall be permitted.

(b) The yearly renewal tab, furnished by the Fire Department, shall be affixed to the lower right side of the Fire Department metal permit plate in accordance with the instructions on the back of the renewal tab.

(c) The Fire Department metal permit plate shall be returned to the Fire Department when the tank truck is no longer to be used for the transportation of combustible mixtures, fuel oil, etc. in New York City.

3. F.P. Dir. 5-63, sections 1.1, 1.3, 1.4, 1.5, 1.6, 9.

1-1. No person, firm or corporation shall transport or deliver for sale, use or storage within the city any [compressed] gases . . . or [flammable or combustible gases or gas which will form an explosive mixture upon concentration in air or which will ignite in air] without a permit from the Fire Commissioner.

1-3. Application for a permit shall be made on forms prescribed by the Fire Commissioner and shall contain such information as shall be required.

1-4. Unless otherwise provided, every permit and the renewal thereof shall be for a period to be determined by the Fire Commissioner but in no case to exceed (1) one year.

1-5. The permit is revocable and not transferable to a new ownership and in the case of a change of ownership of the truck, the new owner shall obtain a new permit.

1.6. The metal plate furnished by the Fire Department when the permit is issued must be securely fastened at the exterior of the cab on the left side of the truck and displayed during the life of the permit. On a semi-trailer transporting cylinders and portable tanks, the metal plate shall be affixed to the left side of the semi-trailer. On a cargo tank semi-trailer (tank permanently attached) the metal plate shall be affixed to a tank head (near the U.S. Department of Transportation markings).

Section 9. Permit fees. An annual fee shall be charged for each permit in accordance with the provisions of section C-19.24.0 of the Administrative Code (of the city of New York).

II. Orders Bearing on the Application

The Fire Department takes the position that there are no existing court orders or rulings issued under § 107.209 having a direct bearing on this application. Two opinions should be mentioned, however, for their indirect bearing.

The United States District Court for the Eastern District of New York, in a case captioned *National Paint & Coatings Ass'n. et al. v. City of New York et al.*, Index No. 84 Civ 4525(ERK), issued an order on October 17, 1990, denying summary judgment to plaintiffs, on the ground that the Federal DOT regulations promulgated pursuant to the former Hazardous Materials Transportation Act ("HMTA") did not preempt the City's four Fire Prevention Directives at issue here merely for their lack of uniformity with the federal regulations. Similarly, the OHMT issued an opinion which was affirmed on appeal to the RSPA, in Docket IRA-40A, holding that the City's Directives were, for the most part, inconsistent with the federal regulations under the former HMTA.

However, since the HMTA has now been superseded by the new HMTUSA, those opinions are largely irrelevant. In any case, since the Fire Department is acknowledging preemption, as to the portions of its regulations for which it is seeking a waiver, those opinions are redundant. The opinion in Docket IRA-40A is also inapplicable because it is based on different standards than are applicable to this proceeding for a Waiver of Preemption; that is, no evidence was considered on the relative safety of the two sets of regulations or on their impact on commerce.

Copies of both opinions are annexed hereto as appendix A (court order) and appendix B (DOT opinion).

III. Provisions With Which the Directives Are Inconsistent

In general, all of the provisions for which a Waiver of Preemption is sought are preempted by virtue of not being "substantively the same" as regulations on the topics in HMTUSA section 105(a)(4)(B) (the "covered subjects").

Specifically, the provisions for which a Waiver is sought most nearly correspond in content with the regulations listed in the table below, or deal with topics that are within the "covered subjects" list but on which no federal regulations have been promulgated.

	F.P. Dir.	49 CFR
A. Capacity limits:		
7-74, §§ 4-1, 4-2, 4-3...	None.	
6-76, §§ 4-1, 4-2	None.	
5-63, §§ 10-1, 10-2	173.315.	
B. Tank construction:		
7-74, § 5-1 (steel only; elliptical thickness; baffles).	178.346-1(d)(3), 178.345-2, 178.345-3; 178.346-2, 178.345-1(a).	
6-76, § 4-2 (baffles)	None.	
§ 5-1 (steel only)	173.118(b) exempts combustibles.	
§ 5-2 (thickness).....	173.118(b) exempts combustibles.	
C. Chassis and combinations:		
7-74, § 29-2 (no semi-trailer).	None.	
5-63, § 10-1 (no full trailer).	177.840 no restrictions.	
D. Equipment:		
7-74, § 3-1 (gravity discharge).	178.345-9 permits pumps.	
5-63, § 5-1.2 (upright only). (with caps)	177.840(a) permits horizontal loading.	
6-76, § 25-1 (no smoking).	None.	
3-76, § 12-1 (no smoking).	None.	
E. Painting of gasoline trucks:		
7-74, § 28-1, 28-2	178.345-14 no paint specified.	
F. Truck uses with permission:		
7-74, § 26-2(c)	177.856 no provision for notice to F.D.	
6-76, § 26-3(d)	None.	
3-76, § 14-3(d)	177.856 no provision for combustibles or notice to F.D.	
G. Inspection and permit:		
7-74, § 1	177.824, 180.405, 178.345-15.	
6-76, § 1	None.	
5-63, § 1	None.	

Argument

IV. The City's Regulations Meet the Standards for Waiver

Under section 112(d) of the HMTUSA, 49 U.S.C. 1811(d), a waiver of preemption may be granted to a local regulation upon a determination that it "(1) affords an equal or greater level of

protection to the public than is afforded by the requirements of this title or regulations issued under this title, and (2) does not unreasonably burden commerce." Those standards are reiterated in the regulations governing applications for a waiver of preemption in 49 CFR 107.215(b) (6) and (7). The regulations also request a statement on what steps the locality is taking to administer and enforce effectively its regulations, § 107.215(b)(8), presumably to assist the Associate Administrator in considering the factors listed in 49 CFR 107.221(b):

(1) The extent to which increased costs and impairment of efficiency result from the * * * requirement. (2) Whether the * * * requirement has a rational basis. (3) Whether the * * * requirement achieves its stated purpose. (4) Whether there is need for uniformity with regard to the subject concerned, and if so, whether the * * * requirement competes or conflicts with those of other States and political subdivisions.

The New York City Fire Department contends that the regulations that it is submitting for waiver meet all the standards listed above. They will each be discussed below.

A. An Equal or Greater Level of Protection to the Public

1. Capacity Limits. The first regulations for which waiver is sought put limits on the capacity of tank trucks that may transport flammable and combustible liquids—gasoline and fuel oil, for the most part—for pickup or delivery in New York City. F.P. Dirs. 7-74 sections 4-1, 4-2, 4-3; 6-76 sections 4-1, 4-2.

The first safety basis for this limitation is obvious: to limit the size of any damage that could result from an accident in which the hazardous product is released from the tank. The less fuel is available to feed a fire, the more easily and faster it can be extinguished.

The DOT regulations do not contain any size limits on cargo tanks for transporting either flammable and combustible liquids or compressed and flammable gases. The only limits are set by total truck weight, which cannot exceed federal and local highway and bridge weight limits. By using aluminum tanks and spreading the weight over tractor-trailer rigs, tank trucks built to federal MC-306 or MC-406 specifications are able to carry 8,000–11,000 gallons of flammable liquids—two to three times as much as is permitted under New York City's regulations.

F.P. Dirs. 7-74 and 6-76 put limits on the total capacity of tank trucks carrying flammables (4,000 gallons) and combustibles (4,400 or 6,500 gallons

depending on the grade of fuel oil). They also require that cargo tanks be divided into compartments of specified sizes. This further limits the amount of product that can spill in an accident. If a truck were to lose product from one compartment through a puncture or a defective cover or valve, the other compartments could contain the rest of the product rather than releasing it to feed a larger fire. DOT regulations permit, but do not require, compartments.

A further safety consideration in these limits is that the greater amount of fuel available to feed a fire, the hotter the fire, as it continues to burn at full strength. A hotter, longer fire exposes the metal of the cargo tank to greater stress, weakening its tensile strength and increasing its potential for rupture and explosion. (See discussion in Point IV.A.2, below.)

Similarly, F.P. Dir. 5-63 sections 10.2, 10.5 prohibit transportation of certain very hazardous compressed or flammable gases in tank truck quantities. When these gases are used by industry in New York City, they are available in portable cylinders, which must meet federal DOT standards. Again, if an accident occurred to a truck carrying individual cylinders of these very toxic or unstable gases, the amount of the hazardous gas that could be released from a few damaged cylinders would be much smaller and the resulting damage much less than if the gases were transported in one huge quantity in a full-size cargo tank truck.

A second type of safety consideration is related to the type of construction and configuration of larger tank trucks. Larger tankers tend to have a higher center of gravity than smaller ones; this, coupled with the lack of any compartments or baffles, leads to a higher risk of rollovers (see Exhibit 15), as well as larger spills if an accident does happen. Also, because of weight limits, larger tanks tend to be constructed of aluminum rather than steel; aluminum melts much more quickly than steel if a fire occurs, thus risking release of all the hazardous liquid at once. (See discussion in section IV.A.2, below.) Finally, larger tankers are customarily configured as tractor-trailer or semi-trailer rigs, which can jackknife. (See section IV.A.3, below.) All these construction and configuration characteristics of large trucks increase the risk of accidents happening; the large amount of product carried increases the risk that any accident will turn into a catastrophe.

For all these reasons, the Department's limits on the amount of hazardous liquids and gases that can be

carried provide a greater level of protection to the public than do the federal regulations, which contain no limits at all.

The extraordinary need for capacity limits in New York City is illustrated by a comparison of two recent accidents involving gasoline tankers, one in New York City on May 20, 1991 and the other in Carmichael, California on February 13, 1991. The National Transportation Safety Board has issued preliminary inspection reports on each of these accidents. See, Exhibits 9 and 10. The NTSB found that the California accident involved a spill and fire consuming some 8,400 gallons of gasoline in a residential area, causing the total loss of the tank truck, its entire cargo, and two parked cars, and the partial destruction of four homes. Some 405 firefighters took three and a half hours to quench the flames. The New York City accident involved a spill and fire consuming only 1,800 gallons of gasoline, in a commercial neighborhood in the Bronx, causing the total loss of the truck, the car with which it collided, ten parked vehicles, and a row of a dozen stores that, luckily, were unoccupied when the accident occurred, at midnight. According to the New York Times (Exhibit 9), some 225 firefighters took three hours to put out that fire. The truck involved in the New York City accident was a 4,000 gallon vehicle with five compartments; three of the five leaked gasoline from defective hatch covers, but the other two contained their product so that only 1,500–1,800 gallons actually escaped to feed the fire. If the truck involved in the Carmichael accident had crashed in the Bronx location, and had released 8,400 gallons instead of the 1,800 that were involved in the Bronx fire, damage could be expected to be commensurately greater. Even with the smaller amount of gasoline lost, damage was far more extensive in the Bronx than in Carmichael, due to the neighborhood conditions in New York City.

As shown in the Affidavit of Lawrence Lennon (Exhibit 6), every trucking route that goes through New York City—not to mention the side streets and avenues where gasoline stations and other gasoline storage tanks are located (see Exhibit 14)—passes between 25,000 to 50,000 people within a half mile on each side of the road. Suburban locations and less densely-populated cities elsewhere in the country do not present this degree of density or safety hazard.

And as shown by the maps from the City Planning Department (Exhibit 14), locations to which gasoline is delivered

are scattered throughout the City, not just on perimeter roads or a few main highways as in many other urban locations. Gasoline deliveries in New York City are made not only to service stations for resale, but also to fire stations, rental car agencies, garages and parking lots, utilities, City agencies (Sanitation garages, Parks Department facilities, etc.), trucking companies, taxi and car service facilities, and other commercial establishments. In Manhattan alone, there are more than 300 locations licensed to receive deliveries of gasoline and diesel fuel; in the other four boroughs, there are some 3,100 additional locations. These are found in or next to residences (many in high-rise heavily populated buildings), other commercial establishments, and also schools, hospitals, and nursing facilities where especially vulnerable people are housed. Exhibit 14 shows the proximity of gasoline delivery locations to schools in Manhattan; it also shows the pervasiveness of these sites in this most densely-populated borough.

Since oil heat is the commonest form of heating for both air and water heat in New York City, fuel oil deliveries are even more pervasive, to virtually every residence and most commercial buildings in the City. Some 89,170 permits were issued this year to receive deliveries of fuel oil for heating or industrial uses, and that number does not include one- and two-family homes, which do not need to get permits for their fuel oil tanks. Exhibit 14.

Beyond its extreme density of population, in closest proximity to the locations where trucks carrying gasoline and fuel oil necessarily travel, New York City is unique in having an underground network of tunnels for various purposes, into which spilled gasoline can flow in an accident, thus creating hazards to even larger geographic areas. Not only sewers, water and electrical and phone lines, but also subways run under New York City's streets. In the May 1991 accident in the Bronx, the drinking water system was contaminated by the foam that was necessary to contain the fire from a spill of only 1,800 gallons of gasoline. See, Exhibit 9. In the April 1991 accident at the entrance to the Whitestone Bridge, gasoline leaked into the sewer system and spread an underground fire far from the accident site itself. See, Affidavit of Feehan, Exhibit 20.

For all these reasons, New York City requires especially stringent rules to limit the potentially catastrophic impact of any accident that might occur to a gasoline or fuel oil truck or tank truck of extremely hazardous gas. To date, the

City's truck specifications (and a generous measure of good luck) appear to have been effective in protecting the residents from any truly catastrophic accident. Any accident in New York City tends to tie up traffic, inconveniencing thousands of travelers. But the May 1991 accident and fire (which occurred at midnight, thus limiting the number of fatalities to those in the two vehicles involved, rather than threatening the hundreds of persons who would have been in the stores during business hours) and a Brooklyn spill and fire in 1989 were so far the only accidents that have resulted in significant property damage at any time since these truck regulations were established. If those accidents had involved MC-306 gasoline trucks, with two to five times as much fuel spilled, the results could have been catastrophic indeed.

2. Construction factors: steel, thickness, shape, baffles. A second set of New York regulations with a clear safety basis are those requiring tanks for flammable and combustible liquids to be made of steel, not aluminum as is permitted under the federal DOT regulations. Further, the thickness of the steel required for City trucks is greater than that required by DOT. Thirdly, the City requires an elliptical tank design that keeps the center of gravity lower than the circular design permitted by DOT, plus requiring baffles in large compartments to minimize sloshing that creates instability. F.P. Dirs. 7-74 section 5-1; 6-76 sections 4.2, 5.1, 5.2.

The Department's requirement of all-steel tanks, rather than the aluminum alloys permitted by the federal regulations, is based on the safety considerations that steel does not melt at as low a temperature as do the alloys, and that steel has a greater tensile strength than aluminum.

According to the Tenth Edition of the Metals Handbook, published by the American Society for Metals, Vol. 2, pages 90-101, the aluminum alloys specified by 49 CFR 178.345-2(a)(2) for cargo tanks carrying flammable or combustible liquids all have a melting point of up to or less than 1200 degrees Fahrenheit. (Pure aluminum melts at 1200 degrees F.) Steel typically melts at no less than 2600 degrees F.

The higher melting point of steel is critical in an accident resulting in a fire. A fire fed by a petroleum based fuel can reach 2,000 degrees F. in a matter of minutes. If a cargo tank carrying gasoline overturns and spills fuel, which ignites, an aluminum tank will begin to melt in a very short time. A New York

City steel tank will not melt, even in a severe fire.

Two recent accidents illustrate this fact of physics: the February 1991 accident in Carmichael, California involving an aluminum gasoline tanker, and the May 1991 accident in the Bronx, New York, involving a steel gasoline tanker. In both cases, the truck overturned, gasoline flowed out from an opening in the tank top, the gasoline ignited and a severe fire followed. According to the preliminary investigation reports by the National Transportation Safety Board, the aluminum tanker completely melted, thus permitting its entire contents (some 8,800 gallons) to be consumed. Exhibit 10. The steel tanker did not melt: Only 1,800 gallons escaped of the 3,800 gallons it was carrying. Exhibit 9.

Second, aluminum and its alloys have a lower tensile strength than steel, and the tensile strength of aluminum alloys is reduced when it is heated by a far higher percentage than the tensile strength of steel is reduced by heat.²

As with the melting points of aluminum versus steel, the tensile strengths of these metals especially when heated in a fire following an accident, is critical. An aluminum tank could be subject to puncture or rupture, releasing its product, in circumstances under which a steel tank would not break open.

Again, actual accident experience bears out this fact of physics. In no accident involving New York City steel tank trucks has the tank ever been punctured or ruptured, whether by an overturn or a collision with another car on with a stationary object (pole, bridge support, etc.). But in an accident involving a MC-306 tank truck on December 7, 1986, in Wayne, New Jersey, which overturned on a curve, the tank ruptured when the truck skidded along the road; sparks ignited the gasoline and the entire vehicle with all its 9,000 gallons was consumed in the fire. And of course, the Carmichael accident described earlier involved a possible puncture and a definite meltdown of the aluminum tank, thereby releasing all of its 8,800 gallons of gasoline.

The Fire Department recognizes that the DOT regulations attempt to compensate for the lower tensile

² Aluminum Alloy 5052 (one of those permitted under DOT regulations) has a tensile strength of 28,000 pounds per square inch ("psi"); that is reduced to 5,000 psi when heated to 700 degrees F. Steel has a tensile strength of 72,000 psi, which is reduced to 23,000 psi at 700 degrees F. See, O. W. Esback, Handbook of Engineering Fundamentals (2d Edn), pp. 12-32, Fig. 4; Metals Handbook, op. cit.

strength of aluminum by the formula used to determine the thickness of the metal shell of the tank. However, even this formula does not take into account the effect of loss of tensile strength in a heated condition caused by a fire. The formula requires only that "temperature gradients resulting from lading and ambient temperature extremes" be considered; 49 CFR 178.345-3(a)(1). No account is taken of the temperatures that can be expected in a fire situation. Therefore, tanks built to this formula are likely to have thinner shells than those built to the City Fire Department specifications. DOT regulations in § 178.346-2, Tables I and II, for specification 406 tanks to carry flammable and combustible liquids, permit a steel tank shell and heads to be as thin as .10 to .12 inches. The City's regulations for steel tanks carrying flammables requires a thickness of at least $\frac{3}{16}$ inch (.1875), and for steel tanks carrying combustibles, 10 gauge U.S. Standard, which is .1379 inch thick.

Also, the DOT formula for thickness is derived from the ASME pressure vessel requirements which are basically intended for vessels in normal use conditions, not those subjected to the stress of an accident in which the tank collides with another vehicle or a bridge abutment or some other object that could puncture the tank. The City's thickness requirements provide an extra edge of safety, intended to protect against such extreme conditions—the very times that protection is most needed.

The City's construction requirement includes a provision for an elliptical shape tank, rather than a full circle which is permitted by DOT regulations. The City bases its rule on the need to keep the center of gravity of a cargo tank as low as possible, to prevent overbalancing on turns or with partially-empty, sloshing loads, that can cause rollovers.

Finally, the Department requires slosh-control baffles in cargo tanks and compartments over a certain size. The instability of sloshing cargo contributes to roll-over accidents. The federal regulations permit, but do not require, compartments and baffles. The Department's rules provide the greater degree of protection on this point.

3. Type of chassis: limits on trailers. The City's requirements, in F.P. Dirs. 7-74, section 29-2; 6-76, section 24-1; 5-63, section 10.1, that flammable liquids be carried only in "straight" trucks, rather than tractor-trailers or semi-trailers, and that combustible liquids and compressed or flammable gases may not be carried in full trailers, is directly based on the different safety records of

these types of truck combinations.³ The DOT permits any combination that will meet weight limits; in practice, semi-trailers are the rule for liquids, and hazardous gases may be carried in full trailer-trucks.

Chassis design is basic to stability of the transport vehicle. Semi-trailer and tractor-trailer combinations have a tendency to jackknife, which, of course, a straight chassis truck cannot do. A study of truck accidents in New York City, July 1, 1987 through June 30, 1990, showed that fully 25% were of the jackknife type; clearly jackknifing is a significant risk for truck transportation. See, chart, "NYC Truck Accidents by Type", in Exhibit 13.

Further, the roll-over potential for DOT-specification semi-trailer tank trucks transporting flammable liquids is significantly higher than that for New York City-specification gasoline trucks. According to a 1984 analysis by Prof. Robert D. Ervin of the University of Michigan's Transportation Research Institute, the MC-306s (in use currently and still permitted to be manufactured through August 31, 1993), had a rollover threshold level of 0.32 to 0.35 Gs, whereas the New York City gasoline trucks, with their lower center of gravity, required 0.42 to 0.47 Gs before they rolled over. See, Exhibit 15, pp. 7-8.

In New York City, even the limit access highways were largely constructed prior to development of federal standards for such aspects as the turning radius of exit ramp curves, or the width of lanes and shoulders and often do not meet those standards. See Exhibit 6, Lennon Affidavit. Thus, driving conditions are more difficult than elsewhere in the nation, and an extra degree of vehicle control is necessary to attain the same level of safety. Drivers accustomed to traveling safely at a certain average speed in other cities may lose control on a tighter-than-expected curve in New York; at that point, the rollover threshold of the vehicle becomes critical. Even if it does not roll over, a combination tractor-trailer rig can jackknife and lead to a collision that could damage the hazardous material container as well as provide an ignition source for a fire.

It may be argued that larger trucks will have fewer accidents than small ones, because they have to make fewer trips to deliver the same amount of product. If size were the only factor, that

argument might have some weight. But at the sizes of tank trucks that are now being used to transport flammable liquids such as gasoline (8,000-11,000 gallons), other factors come into play. First, the weight limits mean that the tanks must be made of lighter-weight, thinner aluminum than the New York City trucks; second, the size dictates that the tanks be mounted on semi-trailers. These two additional factors tip the risk analysis significantly in favor of the smaller, steel, straight trucks.

In 1987, the City commissioned a study from the Arthur D. Little consulting firm in Boston, to compare the City's regulations on cargo tank capacity and construction with the federal DOT regulations on the same subjects. The study ("the ADL Study") Exhibit 5, balanced the factors that go into a computation of risk, including: the risk that an accident would happen in a certain number of miles driven; the relative miles driven by larger or smaller trucks to make deliveries of the amount of product used in New York City; the risk that an accident would result in a spill of some or all of the product; the risk that a fire or explosion would result from a spill. The ADL Study's conclusion was that accident risk (both frequency and size) would increase by almost 60% if larger tractor-trailer rigs, with tanks made of aluminum rather than steel, were used in New York City instead of the smaller steel tank trucks required by City regulations. If the larger aluminum semi-trailer tanks also lacked compartments or baffles, the risk would go up by 85%. See, ADL Study, Exhibit 5, pp. 5-30 (larger aluminum trucks); 5-38 (larger aluminum trucks without compartments or baffles); Tables 5.17 at p. 5-39 for summary of factors.

4. Other equipment and handling rules: gravity discharge; cylinder restraints; no smoking. The Fire Department's regulations as presently written require all tank trucks delivering flammable liquids to unload their product solely by the gravity discharge method, rather than using any kind of pump. F.P. Dir. 7-74, sections 3-1. Upon review, the Department has determined to revise this regulation slightly. It recognized that certain paint components, for instance, are highly viscous and therefore very hard to unload solely by gravity discharge; the Fire Department also recognized that the volume of flammable liquids used in paint manufacture in New York City is slight, compared to the volume of other types of flammable liquids, principally gasoline, to which this regulation is intended to apply. Therefore the Fire Department has revised its enforcement

³ Also, the prohibition on full trailers is intended to prevent a trucker from uncoupling a trailer (which can stand alone) and leaving it with a hazardous cargo overnight or otherwise unattended in the City.

policy and will be revising the text of the regulation itself, so that it will henceforth apply only to deliveries of gasoline.

The safety basis for this requirement is that, under other Fire Department regulations, storage tanks with permits to receive gasoline must be buried below ground level; therefore gravity discharge is easily feasible, and also discharge by pump is dangerous because it could over-pressure or overfill the storage tank and cause the gasoline to spill. Also, if a hose ruptures during delivery, discharge by means of a pressure-pump will result in more gasoline being spilled than would occur if the gasoline is merely flowing by gravity.

For trucks carrying cylinders of compressed or flammable gas, F.P. Dir. 5-63, section 5.1.2 requires that the cylinders not be transported in positions that would interfere with the proper functioning of the safety-release valves. These valves are designed to release the gas in vapor form, if emergency venting is necessary.

If the cylinder is carried horizontally, liquid (which sinks) rather than vapor (which rises to the top) is next to the vent valve. If a release of flammable and oxidizing gases occurs in liquid form it would be extremely dangerous. For this reason, the Fire Department interprets this regulation as prohibiting transportation of gas cylinders in a horizontal position; the DOT regulations in 49 CFR 177.840(a)(1) expressly permit such a position. The Fire Department's rule is clearly safer.

Similarly, although DOT-specification cylinders for some types of compressed and flammable gases provide for safety restraint collars or "caps" that can be screwed on, the regulations in § 177.840 do not require that these caps be present or secured during transportation of these cylinders. The Fire Department's regulation expressly provides for this additional level of protection.

The Fire Department regulations forbid smoking by anybody on any truck carrying flammable or combustible liquids or flammable gases. F.P.Dirs. 6-76 section 25; 3-78 section 12-1. The DOT regulations against smoking apparently apply only to persons on tank trucks carrying flammable liquids and gases, but not to those carrying combustible liquids or to trucks carrying smaller containers of flammables or gases. However, in Docket IRA-40, the RSPA ruled that the combustible tank-truck's no-smoking provision, section 25 of F.P.Dir. 6-76, was not inconsistent with federal regulations. Therefore, if the DOT now interprets its regulations against smoking as applying also to all

trucks carrying combustible as well as flammable liquids, the corresponding New York City regulations are obviously not preempted. If they were held to be preempted, the City hereby requests a Waiver of Preemption.

5. Painting and Marking of Gasoline Trucks. The DOT has no provisions governing the color of trucks carrying flammable liquids such as gasoline. It provides only for small, detachable placards with the identification and symbol for the particular contents of the tank truck. New York City has, for more than half a century, required that gasoline trucks be painted red with the word "GASOLINE" painted in white on the tank and the bumpers in a size of lettering large enough to be seen from a distance. F.P. Dir. 7-74 sections 28-1, 28-2. This provides a warning to other drivers and pedestrians, to stay back and exercise caution appropriate to this extremely hazardous cargo. It also gives an immediate clue to emergency response personnel at an accident as to what type of hazard they are about to encounter. Placards can be removed or destroyed in a fire; a permanent marking is far safer.

6. Emergency Transfers of Product. The DOT regulations provide useful guidelines for emergency response to accidents involving various types of products and the Fire Department is happy to use these procedures. But the DOT regulations lack two components that the Fire Department feels are necessary in New York City.

First, the procedures apparently do not apply to emergencies involving trucks carrying combustible liquids such as fuel oil, which is almost as easily ignited as flammables (the flash point of #2 home heating oil can be 125° F., just about the 100° flash point for flammables—a temperature easily reached in case of any spill with a fire). The Fire Department's regulations require emergency procedures (such as removal of the oil to another appropriate truck) in case of damage to a fuel-oil truck, as well as to a gasoline or compressed gas truck. F.P. Dir. 7-74 section 28-2(c); 6-78 section 26-3(d); 3-78 section 14-3(d).

Second, in New York City, the Fire Department wants to be on the scene when such truck-to-truck transfers are made and therefore requires notification to and permission by a Departmental representative before the transfer is made. *Id.* This assures that the receiving truck is appropriate to receive the transferred product, and that the Fire Department is alerted to protect against any further mishap at the scene.

7. Inspection and Permits. Under federal regulations, all inspection of

hazardous materials trucks carried out by the manufacturers and owners, who must certify that their trucks conform to the DOT standards. No independent inspection is required, making this essentially an honor system.

New York City regulations require annual truck inspections by the Fire Department for vehicles carrying hazardous materials. The trucks' general safety level is checked—tires, brakes, lights, etc.—as well as their conformity to the Department's design requirements for the particular type of product they will carry. To demonstrate their compliance with both these matters, the trucks thereafter carry a New York City Fire Department permit and display a plate with their permit number and annual renewal sticker, on the tank. F.P. Dirs. 7-74 section 1, 6-78 section 1, 5-63 section 1.

According to the inspectors who check trucks for the Department, about 15% fail their annual inspections, and a similar percentage fail spot-checks when stopped on the road and are taken out of service until they correct the problems. See, Exhibit 7, Pepper Affidavit, ¶¶ 9-15.

Also, the New York City Police Department has a special Motor Carrier Safety Unit, on 24-hour patrol throughout the City, stopping trucks that appear to be in violation of some City, State or federal regulations. In the 1991 fiscal year, this unit gave out more than 8,000 summonses for violations. Among the violations discovered by this unit have been false DOT plates, indicating that the honor system does not always succeed. See, Exhibit 8, Novak Affidavit, ¶ 8.

The number of violations found, both by the Fire Department inspectors and the Police Department officers, indicates that truckers do not always follow the rules and do not always adequately maintain their vehicles in safe condition to transport the hazardous materials they are carrying. Without this inspection and permit system, it is foreseeable that even more trucks would be allowed by their owners to operate in an unsafe condition, leading to more, and more serious, accidents. Having to obtain an annual permit, by passing an annual inspection, is an important safety measure that provides a greater level of protection to the public than the federal DOT's honor system of truck certification.

Thus, each of the Department's regulations for which a Waiver of Preemption is sought meets the first test, of providing an equal or greater level of protection to the public than do the federal regulations.

B. No Unreasonable Burden of Commerce

In codifying the second test for whether a local regulation may receive a Waiver of Preemption under the HMTUSA, Congress used the same language as is found in Supreme Court cases discussing the Commerce Clause: that the regulation not impose an "unreasonable burden on commerce." HMTUSA section 112, 49 U.S.C.

1811(a)(2). Therefore it may be presumed that the same standards apply to this test as the Court uses in Commerce Clause cases.

That standard, as explained in, e.g., *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 (1981), has two facets. First, the local rule may not be intended for economic protection of the locality's businesses at the expense of out-of-state businesses; second, any "incidental" burdens on interstate commerce that are imposed by "evenhanded" regulations must be shown to be not "clearly excessive" in light of the local interests served by the local rule. *Id. See also, Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978); *Pike v. Bruce Church Inc.*, 397 U.S. 137, 142 (1970).

Both prongs of this test are satisfied by those portions of the City's Fire Prevention Directives at issue here.

1. No Protectionist Discrimination. First, the underlying intent of these regulations is to promote local safety, not local economic interests. Thus any economic burden that results is not intentional economic protectionism but "incidental" to the aim of safety.

Also, the rules are written "evenhandedly" to apply to any trucks delivering or picking up hazardous liquids or gases within New York City, regardless of where the trucks were manufactured or where their owners have their legal residence. These rules are not intended to keep out non-New York City trucks, but to assure that all trucks, whatever their origin, are safe to deliver hazardous materials in the special conditions of New York City. See, Exhibit 18, list of New York City permitted gasoline trucks, showing owners and mailing addresses, which shows that of the 306 trucks that now have Fire Department permits to carry flammable liquids, 105 are owned by one of 19 companies from outside of New York City; 75 are owned by eight different national gasoline companies; and the rest are owned by some 50 other companies, public utilities and City agencies.

Further, in their impact, these regulations do not discriminate in favor of local residents. To the contrary, if they impose any economic burden, it is

on the local economy. Any economic burden that may be created by the need for truck companies to spend more to comply with the City's rules is directly imposed on customers within New York City, by a pass-along of costs into the ultimate price paid by the New York City consumer. New York City is not asking the rest of the nation to pay for the City's special safety needs; its residents pay for these needs themselves.

This economic fact is demonstrated by the prices charged to wholesalers and then to retail customers for gasoline and fuel oil in various other parts of New York State, compared to the prices charged in New York City. See, Tables in Exhibit 19. Clearly, any increased costs attributable to special New York City conditions—including any special trucking costs—are passed on to and ultimately burden New York City residents and businesses, not persons and companies outside the City.

2. Only Slight Economic Burden.

Second, any impact on commerce from increased costs to the petroleum and chemical industries nationwide due to the City's regulations and transportation of those products is too small to be significant. The standard for measuring impact on commerce is that of impact on the whole market, not on any one firm or sub-contractor within the affected industry. *Exxon v. Governor of Maryland, supra.*

Thus, the relevant inquiry is what impact the City's regulations have on the cost of producing and selling flammable and combustible liquids and gases (petroleum products and certain chemicals). The shipping cost associated with these industries is only one component of the costs of these industries as a whole, and in this case, any increase due to New York City shipping rules is minimal.

There is little point in discussing separately the economic impact of each one of the Fire Department's regulations for which it is seeking a Waiver of Preemption, since only one of them—tank size capacity—has more than the slightest impact on any costs.

The ADL Study computed the costs of these industries' shipping component (equipment, drivers, operating expenses, insurance and licensing), both for the smaller trucks under the City's regulations and also for the larger trucks not meeting City standards. The ADL Study's figures, discussed in its chapter 4 and summarized in Table 4.7, show that using aluminum tanks rather than steel, in the same size the City requires, would actually increase the cost to the truck owner, since aluminum is more expensive. But when larger aluminum

tanks are permitted, so that fewer trucks are required to deliver the volume of product used in New York City, the total cost goes down. Similarly, with regulations requiring compartments or baffles rather than none, it is only when larger tanks are assumed that the cost of these construction details varies more than a few thousands of a percentile. See, Exhibit 5, Table 4.7.

Although no individual cost statistics have been developed on the few additional regulations for which waiver is sought here, it may confidently be assumed that no one of them—gravity discharge equipment rather than pumps, painting trucks red, transporting gas cylinders upright with safety caps, or obtaining a \$105 annual truck permit—would by itself add any significant amount to a per-truck annual cost estimate in the \$70,000 range. (See, ADL Study, Table 4.6 for number of trucks and Table 4.7 for total costs for the aggregate number of trucks.) Therefore, the discussion that follows concentrates on the economic impact—or lack of impact—of the regulations limiting tank capacity. The burden on commerce of all the other regulations for which waiver is sought here is simply negligible.

According to calculations by transportation economist Dr. Richard J. Morris, dealing solely with the costs of flammable and combustible chemicals (rather than gasoline and fuel oil), the increase in cost of complying with the City's rules amounts to only 0.009 cents per gallon, which is somewhere from two-tenths of one percent to one percent of the delivered price, depending on the chemical. See, Exhibit 17, Comments of Dr. Richard J. Morris, December 14, 1987, pp. 4-5. That impact is clearly insignificant.

Gasoline and fuel oil make up by far the largest portion of the flammable and combustible liquids delivered to New York City. Compared to flammable and combustible chemicals, the petroleum-based products constitute at least nine-tenths of the market. (The ADL Study estimated that some 3,225 million gallons per year of gasoline and fuel oil were used in the City but only 2.4 million gallons were used per year of flammable mineral spirits, a major flammable chemical. See, Exhibit 5, ADL Study, Table 3.1 at p. 3-5. Estimates by Dr. Morris based on chemical industry data suggest that the gallons per year for all flammable and combustible chemicals might be as high as 350 million; see Exhibit 17, p. 5). Using either end of that spectrum, any increase in costs due to the impact of the City's regulations on shipping of flammable and combustible chemicals alone is a

minuscule part of the entire flammable and combustible liquids market.

As to the petroleum industry, the actual cost burden from the City's truck size rules is even less significant than that for chemicals. Whereas some flammable and combustible chemicals are shipped into New York City from distant manufacturing sites, and thus would probably use large, long-distance tankers for local deliveries if the City permitted them, the gasoline and fuel oil industry does not need to use such trucks. Its products are delivered from local tank farms, not by long-distance truck from distant refineries. Nor do these tank farms receive their product by truck, for the most part. A report from the New York State Energy Department showed that in 1987 (the most recent year for which figures were available), shipment of petroleum products into New York State was 51.5% by pipeline, 46.1% by barge, and only 2.4% by rail and truck, taken together. See, Exhibit 16, May 1989 Draft New York State Energy Plan, Vol. III pp. 34-35. Therefore, with this distribution system in place, even if the City's regulations were removed, gasoline and fuel oil customer deliveries would continue to be made by local truck fleets, not long-distance tankers.

The local truck fleets are already in existence, some owned by the gasoline companies themselves (Amoco, Exxon, Mobil, Shell, etc.), others by various trucking companies in New York City, Long Island, Westchester County, and New Jersey. See, Exhibits 18, truck list, and 7, Affidavit of Pepper ¶ 9, stating that in 1990 the Fire Department had given permits to some 306 trucks for gasoline delivery and to some 2,364 trucks for fuel oil delivery in the City. Therefore, even if the larger trucks were allowed, there is little incentive for the petroleum industry to incur any additional costs for new equipment by switching to long distance trucks, rather than continuing to use their smaller trucks already in place.

The ADL Study, ignoring this fact, made a theoretical estimate of what relative costs would be in the shipping component of the industry, if all petroleum deliveries as well as all chemical deliveries were made by the larger, long distance type trucks. The Study concluded (Exhibit 5, Table 4.8) that using the present smaller trucks, which take more trips to deliver than the same amount of product than would a larger truck, increases shipping costs about 30% over the theoretical use of larger trucks. The ADL Study did not attempt to calculate whether, or in how many cases, petroleum companies

would actually switch to the larger trucks if they were allowed. Given New York City's congested traffic and narrow, vehicle-lined streets almost everywhere that local deliveries must be made, companies might have to continue to use the more maneuverable smaller trucks as a matter of practical fact!

The final step in determining whether any economic burden on the market is an "unreasonable burden on commerce" is to balance the economic factors against the weight of the local interest served by the local rule. The ADL Study (without using that terminology) attempted to draw such a balance. The ADL Study quantified its "risk assessment" conclusions and compared them to the economic assessment, much as a policy-maker might do in weighing whether a course of action is worth the cost. The ADL Study's conclusions, expressed visually, are found in Exhibit 5, Figures 6.1 (for regulations on transportation of gasoline), 6.2 (for regulations on transportation of fuel oil), and 6.3 (for regulations on transportation of mineral spirits) at pages 6-2 to 6-4 of the Study. In each case, the safety risks associated with larger trucks with aluminum tanks in New York City increased by 80-90% over the risks associated with small trucks with steel tanks. Against this risk factor, ADL balanced the 30% cost savings in shipping costs associated with larger trucks. The balance falls into the only "moderately attractive" range on the economic side, against the "highly unattractive" range on the safety side.

For such a modest economic gain, New York City strongly believes that the extreme increase in risk of accident (especially given the possibility of catastrophic consequences from any accident in this location) tilts in favor of maintaining safety. Especially since it is the City that bears the burden, the City's regulations must be held to constitute only a reasonable, not an undue, burden on commerce.

V. The New York City Regulations Meet the Decision Criteria

In the regulations on Waiver of Preemption, 49 C.F.R. 107.221(b), four factors are listed for the Assistant Administrator to consider in making a determination on whether the local rules qualify for a Waiver of Preemption. The New York City regulations meet all these criteria as well.

A. Extent of Cost Increase and Efficiency Decrease Is Slight

The impact of the City's regulations on cost to the petroleum and chemical industries is discussed in part IV.B

above. In brief, only the regulations limiting tank size have any appreciable impact on costs. The actual size of that impact is only speculative, since it appears that larger trucks (which would lower costs) would be used to make deliveries in New York City only by the chemical industry, which represents, at most, one-tenth of the flammable and combustible liquids delivered in New York City. Gasoline and fuel oil would continue to be delivered locally, probably in smaller trucks now being used.

Efficiency, likewise, is not likely to be seriously impaired if a waiver is granted and the current size limits are retained. Some unknown number of chemical producers might choose to ship product directly from a distant plant to a New York City customer in a large aluminum semi-trailer vehicle without stopping for re-distribution at a local chemical broker, as they do now. Such a shipper would indeed find it more efficient not to have the product transferred to a smaller New York City truck. But as discussed above, the bulk of the flammable and combustible liquids delivered in New York City are gasoline and fuel oil, for which there would be no efficiency gain from not having to stop a large long-distance truck at a tank farm to reload into small trucks. Tank farms are already supplied, more efficiently, by pipeline and barge, not by large long-distance trucks.

It is important to note that none of the City's construction regulations apply to trucks carrying hazardous materials that are simply travelling through the City without stopping to pick up or deliver. Thus it is not necessary for through shipments either to change trucks or to get a permit in order to travel from one side of the City to the other. No loss of efficiency in through-travel is caused by these regulations at all.⁴

B. A Rational Basis Exists for These Regulations

As discussed in part IV.A above, the basis for each of the regulations as to which a Waiver of Preemption is sought is safety. Large semi-trailer rigs with aluminum tanks are more likely to have accidents, and the accidents are more likely to be catastrophic in size due to the lower melting point and tensile strength of aluminum than steel. Annual inspections, by other than the truck owners, enforced through a permit

⁴ Through trucks are subject to other New York City regulations, on permissible routes and times of travel. These regulations have not been preempted under the HMTUSA or any regulations yet issued under that Act, and the City is not seeking a Waiver of Preemption as to them at this time.

requirement, contribute to increased safety by encouraging adequate maintenance. Each of the other requirements is based on a safety need and adds a level of protection for the public that is rationally required in the unique conditions of New York City.

C. The Rules Achieve Their Stated Purpose

The City's regulations on truck construction and size have been maintained, first, through the permit system and also through the enforcement efforts both of the Fire Department and the Police Department. See, Exhibits 7, 8, Affidavits of Pepper and Novak, describing the permit and enforcement systems. The rules are not simply stated and left to the truckers' own consciences, but are actively enforced, helping insure that the regulations do achieve their purpose—that of protecting the public from potential accidents that could lead to fires or explosions in the midst of densely-populated residential or commercial areas.

The City's regulations have been in force for more than half a century. To date, very few serious accidents involving gasoline or fuel oil trucks or trucks carrying compressed or flammable gases have occurred in New York City. Of those that have occurred, only three have resulted in fires, and in each of those cases, the size of the fire was minimized by the capacity limits of the tanks and the requirement that tanks be constructed with individual compartments. In no accident involving a City-specification truck has the tank been punctured or melted so as to release the product; any release has always come from injuries to or defects in loading or cover assemblies. This is in contrast to accidents elsewhere, involving federal-specification trucks made of aluminum, which do rupture and ordinarily also melt once a fire has begun, thus leading to release of the entire contents to feed a still-larger fire. See, e.g., Exhibits 10, 12, reports on accidents in Carmichael, CA and Wayne, N.J. Compare these with Exhibits 9, 11, reports on accidents in New York City: Feb. 29, 1988 (fuel oil truck piping sheared off, leaked 800 gallons from only one compartment; no fire); May 5, 1988 (gasoline truck overturned, no spill, 2,000 gallons off-loaded and truck righted and towed with other half of contents safe); October 11, 1988 (3,000 gallon gasoline truck in collision, overturned, between 500-2,000 gallons spilled and ignited, burning two buildings, tank did not rupture or melt); September 13, 1989 (fuel oil truck overturned, leaked

unknown amount of its 4,200 gallons of oil, no fire); November 29, 1989 (gasoline truck collided with auto, fire in engine compartment but cargo tank intact and no spill or fire).

Given this record, it appears that the City's regulations have achieved their stated purpose to date. The City wants to continue to maintain this good record by continuing to enforce its regulations in the future as well.

D. No Need for Uniformity; No Conflict With Other States

Congress provided for a Waiver of Preemption even as to regulations on topics included in the "covered subjects" portion of the HMTUSA, as to which a need for uniformity is stated. This indicates that a stated need for uniformity is not the only factor to be considered in deciding whether to grant a Waiver of Preemption. The inclusion of the factor of uniformity, in the list of factors to be considered in the Regulations on Waiver (which factors are not in the statute itself), may simply be intended for application in cases where the law as silent on any need for uniformity, so that this factor may be essentially inapplicable to considering the present application. But insofar as uniformity is weighed on this application, any need for national uniformity must give way to the even more basic need for a level of safety high enough to protect the population of the nation's most densely-settled City.

There is no danger that New York City's regulations will conflict with those of neighboring jurisdictions so as to create a patchwork of rules differing in each and every political subdivision through which a hazardous material shipment may pass. The HMTUSA has taken care of that possibility. New York City is unusual—perhaps alone—in having more stringent safety regulations than the rest of the nation. The only trucks that need to meet those rules are the ones that deliver or pick up in New York City—not those that simply pass through with cargo destined for other locations. The trucks now carrying the vast bulk of the flammable and combustible liquids to which the City's rules apply do not travel nationwide, and thus do not have to worry about whether they will meet the otherwise uniform standards, elsewhere. These trucks are acceptable where they are, as they are, in New York City and its environs.

It is inconceivable that, if the City's regulations do receive a Waiver of Preemption, a City-specification truck would be held to be in violation of the HMTUSA just because it was also operating in New Jersey, Westchester

County, or on Long Island. That is, conformance with the City's safer limits, if those are upheld, should not render those trucks "unfit" to carry their cargos in adjacent locales, just because the trucks are not uniform with others in those places. Non-uniformity by waiver does not pose any danger to the overall rule of uniformity elsewhere.

The HMTUSA emphasizes both uniformity and safety—the former presumably not for its own sake, but as a method of achieving the latter. In the case of New York City, the unique combination of factors (including density of population, sub-standard road construction, existence of many subways, bridges, tunnels, a level of traffic congestion that makes emergency response particularly difficult if accidents do occur, and the fact that gasoline and fuel oil must be delivered on virtually every street in the City) means that special rules are needed to achieve the same level of safety as would be achieved by the uniform rules nationwide. Where uniformity hinders rather than helps achieve safety, uniformity must give way. New York City's situation presents such a case.

Conclusion

New York City's remaining regulations meet all the standards for a Waiver of Preemption. A Waiver should be granted.

Respectfully submitted,
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Grace Goodman,
of Counsel.
City's Appendix A

United States District Court, Eastern District of New York, National Paint & Coatings Association, Inc., *et al.*, Plaintiffs, against City of New York, *et al.*, Defendants.

Memorandum and Order
84 CV 4525 (ERK)

Korman, J.

In November 1984, plaintiffs brought this action against the City of New York, *et al.*, to "enjoin implementation and enforcement of ordinances, directives and regulations promulgated by [defendants], which * * * purport to regulate the transportation of hazardous materials to and through New York * * *." Complaint at Paragraph 1. Plaintiffs also sought "a declaration that said ordinances and regulations * * * are unlawful and violate the United States Constitution and are inconsistent with, and preempted by, the Hazardous Materials Transportation Act ("HMTA")

[49 U.S.C. app. 1801 *et seq.* (1982 & Supp. I 1983, II 1984, III 1985, IV 1986, V 1987)] and regulations promulgated thereunder [the Hazardous Materials Regulations ("HMR") 49 CFR 100 *et seq.* (1989)]." *Id.*

On March 12, 1985, plaintiffs moved for summary judgment pursuant to Fed. R. Civ. P. 56. Judge Sifton characterized the motion as follows:

On this motion for summary judgment, plaintiffs * * * seek invalidation on the basis of preemption of certain sections of the NYFD's regulations in Fire Prevention Directives 3-76, 6-76 (Revised), 7-74 (Revised) and 5-63. Plaintiffs divide these regulations into three categories: (1) Hazard warning signs, (2) cargo containment systems, and (3) those regulations that govern areas regulated by the Federal Motor Carrier Safety Regulations.

* * * * *

In support of its motion, plaintiffs argue that they are entitled to relief as a matter of law because New York City's authority to promulgate regulations concerning the transportation of hazardous materials is automatically preempted by federal law. It is important to appreciate the thrust of this argument. Plaintiffs are not, for the purposes of this motion, arguing that New York's regulations are inconsistent with federal law or that compliance with both federal and city regulations would be economically or technologically impossible. Plaintiffs recognize that both of these arguments are peculiarly factual and would require substantial expert testimony. Rather, plaintiffs argue that the HMTA "regulates hazardous material transportation so comprehensively that any New York City regulations within this area of detailed and persuasive federal control are automatically preempted as a matter of law."

National Paint & Coatings Ass'n, Inc. v. City of New York, No. 84-4525, slip op. at 5, 7-8 (E.D.N.Y. November 6, 1985) (citation omitted) (hereinafter "Slip op.").

On November 6, 1985, Judge Sifton denied plaintiffs' motion for summary judgment on three grounds. First, he held that "[p]laintiffs have not made a sufficient showing that federal regulations were intended to occupy the field (of hazard warning systems) with respect to such a large number of presumably small local deliveries in the most densely populated urban environment or how (defendants') regulation constitutes an obstacle to the objectives of the HMTA." Slip op. at 21 (citation omitted). Second, he held that defendants' regulation requiring that cargo tanks be made of steel was not automatically pre-empted because the federal regulation requiring that cargo tanks be made of aluminum states that it is only a "minimum requirement[]" and the Research and Special Program Administration of the Department of Transportation ("RSPA") which has

jurisdiction over this area, has not "concluded that a requirement beyond aluminum may not be imposed" *Id.* at 22-23. Specifically, Judge Sifton observed:

Specifications of MC-306 cargo tanks and other hazardous materials containers are subject to detailed federal regulations at 49 CFR 178. However, the language of the federal regulations suggest that [RSPA] did not intend to preempt state regulations in the same area. 49 CFR 178.340-1 provides that construction of MC-306, 307 and 312 tanks must meet the requirements contained in section 178. Section 178.340-1(b) explicitly provides that the requirements in section 178 are minimum requirements.

Id. at 22.

Third, Judge Sifton held that defendants' regulations could not be pre-empted by the Federal Motor Carrier Safety Regulations ("FMCSR") in the absence of a factual determination of inconsistency, *id.* at 23-25, because the federal regulation itself states that it is "not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto." 49 CFR 390.9 [formerly at 49 CFR 390.30 (1987)].¹

On April 13, 1987, American Trucking Associations, Inc., one of the plaintiffs in the pending action, along with National Tank Truck Carriers, Inc., filed a petition with the Office of Hazardous Materials Transportation ("OHMT") for an administrative determination whether the regulations at issue are "inconsistent" with the HMTA or with either the HMR or the FMCSR. 52 FR 18,668 (1987). The petition was filed pursuant to 49 CFR 107.203(a), which provides that "[a]ny State or political subdivision or any person affected by a requirement of a State or political subdivision may apply to OHMT for an administrative ruling as to whether a particular existing requirement of the State or political subdivision concerned is inconsistent with a requirement of the (HMTA) or the regulations issued under [it]." Pursuant to 49 CFR 107.205(b), OHMT may publish a "Public Notice and Invitation To Comment" on the petition. After receiving comments from interested parties, the Director of OHMT

¹ Judge Sifton held that when the FMCSR was incorporated into the HMTA, 49 CFR 177.804, "DOT explicitly stated that the incorporation did not alter the preemptive effects of the FMCSR." Slip op. at 24. See 43 FR 4858 (1978) ("The Department does not intend for [the incorporation of the FMCSR into the HMTA] to alter the categories of persons subject to the FMCSR, to alter the substance of those regulations, or to preempt state or local law not preempted by the FMCSR before incorporation into [the HMTA].")

must employ the following standard to determine whether a local regulation is inconsistent with the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

49 CFR 107.209(c)(1), (2). The resulting inconsistency ruling is "advisory in nature" and intended to "provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision." 52 FR 46,574 (1987).

On May 18, 1987, the Director of OHMT issued a Public Notice and Invitation to Comment on the application for an inconsistency ruling. 52 FR 18,667 (1987) (hereinafter "Notice"). Specifically, the Notice advised interested parties that the applicants sought an administrative ruling to determine whether the New York City regulations at issue here "are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder, and, therefore, preempted under section 112(a) of the HMTA." ² *Id.* at 18,668. The Notice went on to advise interested parties that comments "should be restricted" to the issue of whether the New York City regulations "are inconsistent with the HMTA or either the HMR or the FMCSR issued thereunder." *Id.* at 18,670. With respect to the issue whether the regulations were inconsistent with the FMCSR, the Notice advised that "a state or local requirement concerning a subject addressed by the cited FMCSR provisions is preempted only if compliance with it and a provision of the FMCSR is impossible." *Id.* at 18,669.

On December 2, 1987, OHMT issued the inconsistency ruling at issue here, 52 FR 46,574 (1987) (hereinafter "IR-22"), in which it found, *inter alia*, that, because "the HMR issued [under the HMTA] consist of well over 1,300 pages of complex and detailed regulations, (i) it is apparent, therefore, that the Secretary, through RSPA, has extensively exercised the HMTA authority to issue 'regulations for the

² Section 112(a) of the HMTA provides that "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is preempted." 49 U.S.C. app. 1811(a).

safe transportation in commerce of hazardous materials.' " *Id.* at 46,580 (citation omitted). OHMT also found, to the extent relevant here, that "[s]ince as early as IR-2, in 1979, it has been clear that hazardous materials transportation cargo containment systems, packagings, accessories, construction tests, equipment and hazard warning systems are areas of exclusive Federal jurisdiction because of the total occupancy of those fields by the HMR." *Id.* (emphasis added).

After an extensive recitation of RSPA's holdings in previous inconsistency rulings and description of the substance of defendants' regulations, the Director of OHMT held:

In summary, the City has created its own independent set of cargo containment, equipment and related requirements which overlap the extensive HMR requirements, which are likely to encourage noncompliance with the HMR, and which concern subjects that RSPA has determined are its exclusive province under the HMTA.

The City misconstrues the purpose of the language in § 178.340-1(b) of the HMR and in 49 CFR 393.2, which respectively state that cargo tank "specification requirements are minimum requirements," and that the FMCSR do not prohibit the use of consistent additional equipment and accessories. These regulations provide discretion to carriers but do not constitute a grant of authority to State or local governments to impose additional cargo containment system, equipment or related requirements on carriers of hazardous materials.

The City's response that it is providing for greater safety—particularly in light of its allegedly unique local conditions—must be placed in its proper context and, more significantly, does not provide an adequate basis on which to find its requirements consistent.

First, virtually every urban and suburban jurisdiction in the United States has a population density which is a matter of concern in planning for, and regulating, hazardous materials transportation.

Second, consideration of any unique population density of New York City must be accompanied by consideration of the City's unique location as a crossroad for a large percentage of hazardous materials transportation between both New England and Long Island and the rest of the Nation; delays and diversions of such transportation are of great safety concern.

Third, and most significantly, this response is irrelevant. To the extent that the City believes the HMR are inadequate, the City may file a petition for rulemaking with OHMT * * * or otherwise participate in OHMT rulemakings * * * (or) it may request a waiver of preemption under section 112(b) of the HMTA * * *.

In (conclusion), the hazardous materials transportation delays caused by (defendants' regulations) * * * are inconsistent with § 177.853, which mandates that highway shipments of hazardous materials be transported without unnecessary delay.

Virutally all provisions of the City's (regulations) result in serious delays of transportation of hazardous materials, regulate areas which RSPA has defined as exclusively Federal, undermine the likelihood of compliance with the HMR, create obstacles to the accomplishment and execution of the HMTA and the HMR, are thus inconsistent with the HMTA and the HMR, and, therefore, are preempted.

Id. at 46,583-84.

Pursuant to 49 CFR 107.211, the City of New York, as a "person aggrieved" by an inconsistency ruling, filed an appeal with the Administrator of RSPA. On June 19, 1989, the Administrator affirmed the decision of the Director of OHMT and adopted his analysis in every material respect. 54 FR 26,698 (1989) (hereinafter "Appeal").³

Plaintiffs now seek summary judgment on the basis of that portion of IR-22, and of previous inconsistency rulings, in which RSPA has "consistently held that it 'regulates the subject of cargo tank containment comprehensively and thus within this subject matter area has preempted the field.'" Letter of December 23, 1987 (quoting IR-2, 44 FR 75,570 (1979)). As Judge Sifton observed in his opinion on the first summary judgment motion, see Slip op. at 8, it is "important to appreciate" the argument that plaintiffs do not make in support of their motion. While the HMTA expressly provides that it pre-empts all local inconsistent regulations, and while RSPA expressly held in IR-22 that defendants' regulations were inconsistent with the HMTA, plaintiffs do not seek summary judgment on this ground. Indeed, at the oral argument of the renewed motion for summary judgment, plaintiffs' counsel specifically disclaimed reliance on RSPA's holding that defendants' regulations constituted an obstacle to the accomplishment and execution of the HMTA because they cause confusion among carriers and delays in transportation. Transcript of Oral Argument, January 12, 1990, at 14-15 ("I am not relying on delay for the motion. The motion is clear * * *. We don't even have to talk about the inconsistency provision of Section 112 of the statute."). Plaintiffs' counsel then argued that they were entitled to summary judgment because "[t]he Department of Transportation has intended through its regulation * * * to occupy the designated category we are talking about * * * [and] this court

should defer to that exercise of intent [because it is rational]." *Id.* at 15.

Discussion

The Supreme Court has held that "[t]he statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof." *City of New York v. F.C.C.*, 486 U.S. 57, 64 (1988). "Beyond that, however, in proper circumstances the agency may determine that its authority is exclusive and pre-empts any state efforts to regulate in the forbidden area," and "hence render unenforceable state or local laws that are otherwise not inconsistent with federal law." *Id.*

The principal issue raised by plaintiffs' motion for summary judgment relates to the manner in which the Department of Transportation reached its determination that its authority is exclusive and renders unenforceable the New York City regulations at issue even if they are "otherwise not inconsistent with federal law." Although regulations adopted by an agency in accordance with statutory authorization have the force and effect of law, *id.* at 63, the Department of Transportation did not promulgate a regulation declaring the regulations are exclusive nor did it make any findings to that effect at the time it issued the regulations that it now claims reflect its intent to pre-empt wholly local regulation. Indeed, while the Director (OHMT) advised the City that, if it believed the regulations issued pursuant to the HMTA are inadequate, "the City may file a petition for rulemaking with OHMT", IR-22 at 46,584, DOT has for some reason not chosen to exercise power it may have to promulgate a regulation that would explicitly pre-empt all State and local regulation in this area. On the contrary, DOT has chosen to assert its determination to pre-empt in dictum that it enunciated in an after the fact, non-binding opinion issued in the course of an alternative dispute resolution proceeding. This opinion rests, in relevant part, on an inference of DOT's initially unexpressed intent to pre-empt derived from the comprehensiveness of the regulations it has adopted pursuant to the HMTA. IR-22 at 46,580.

In determining the pre-emptive effect of an "interpretive rule" that, like IR-22, was not promulgated in accordance with the substantive rules of the Administrative Procedure Act, the Supreme Court has held:

"[A] court is not required to give effect to an interpretive regulation. Varying degrees of deference are accorded to administrative interpretations, based on such factors as the

³ On appeal, the Administrator uses the same criteria that the Director of OHMT uses to determine "whether a state or local requirement is consistent with, and thus not preempted by, the HMTA[.]" 54 FR 26,698 (1989).

timing and consistency of the agency's position, and the nature of its expertise." We need not decide whether these regulations are properly characterized as "interpretive rules." It is enough that such regulations are not properly promulgated as substantive rules, and therefore not the product of procedures which Congress prescribed as necessary prerequisites to giving a regulation the binding effect of law.

Chrysler Corp. v. Brown, 441 U.S. 281, 315 (1979) (citation and footnote omitted).⁴ Accordingly, assuming Congress intended to confer on the Secretary of DOT the power to decide that its "authority is exclusive and pre-empts any state efforts to regulate in the forbidden area ()," *City of New York v. F.C.C.*, 486 U.S. at 64 (citations omitted), the legal effect of that declaration turns on its reasonableness and persuasiveness and whether the "choice to pre-empt 'represents a reasonable accommodation of conflicting policies that were committed to the agency's care'" by Congress. *Id.* (quoting *United States v. Shimer*, 367 U.S. 374, 383 (1961)). The relevant part of IR-22 upon which plaintiff's rely fails to meet this test.

Unlike the regulations at issue in *City of New York v. F.C.C.*, the principal case cited by plaintiffs, which were preceded by a "Notice to retain technical standards guidelines at the federal level which * * * could not be exceeded () in state and local technical quality regulations ()" at *Id.* at 65 (quoting 50 FR at 52,464), and which were accompanied by explicit, contemporaneous findings justifying a broad exercise of the agency's pre-emptive power, *id.*, the advisory ruling here was issued after the regulations were promulgated and without prior notice of DOT's intent to exclusively occupy the area. Compare with *City of New York v. United States Dep't of Transp.*, 539 F. Supp. 1237, 1257 (S.D.N.Y. 1982) ("DOT's interpretation of its own regulations * * * was announced beforehand and adopted with a reasoned explanation of its

⁴ In IR-22, the Director recognized the force of this holding when he distinguished between properly promulgated substantive rules and those that were not promulgated in the manner prescribed by Congress:

The reason for distinguishing between FMCSR provisions incorporated into the HMR by § 177.804 and those incorporated into the HMR by other HMR sections is that § 177.804 was the subject of unique rule making. That section was issued by a final rule which was not preceded by a notice of proposed rule making (NPRM) because it involved merely agency practice and procedure. Under the Administrative Procedure Act (APA), that section, because of the unusual nature of its promulgation, could not result in substantive changes, such as a change in the pre-emptive effects of the regulations it incorporated into the HMR.

IR-22 at 46,574.

content and purpose. Consequently, its validity must be judged by its reasonableness and necessity, not by its form."), *rev'd on other grounds*, 715 F.2d 732 (2d Cir. 1983), *cert. denied* 465 U.S. 1055 (1984).

More significantly, the Director improperly inferred an intent to pre-empt solely based on "the total occupancy of those fields by the HMR []." IR-22 at 46,580. The Supreme Court has expressly held that it is improper to infer pre-emption on the basis of the volume and complexity of an agency's regulation, particularly in the fields of health and safety:

To infer pre-emption whenever an agency deals with a problem comprehensively is virtually tantamount to saying that whenever a federal agency decides to step into a field, its regulations will be exclusive. Such a rule, of course, would be inconsistent with the federal-state balance embodied in our Supremacy Clause jurisprudence. [Citation omitted].

Given the presumption that state and local regulation related to matters of health and safety can normally coexist with federal regulations, we will seldom infer, solely from the comprehensiveness of federal regulations, an intent to pre-empt in its entirety a field related to health and safety.

Hillsborough County, Fla. v. Automated Medical Laboratories, Inc., 471 U.S. 707, 717-18 (1985); see also *Motor Vehicle Mfrs. Ass'n v. Abrams*, 899 F.2d 1315, 1320-21 (2d Cir. 1990) ("[I]n a field traditionally regulated by state law, '[w]e are even more reluctant to infer pre-emption from the comprehensiveness of regulations than from the comprehensiveness of statutes.' " [citation omitted]).⁵

While these cases deal with judicial interpretation of an agency's regulations rather than the interpretation by an agency of its own regulations, there is no reason why a different rule should be applied in the latter case. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978), upon which the Director relied here, IR-22 at 46,580, does not suggest otherwise. There the Supreme Court determined that Congress by clear implication prohibited higher state safety standards for vessels than those promulgated by the Secretary. *Id.* at 174. Accordingly, the Supreme Court held that "[t]he relevant inquiry * * * with respect to the State's power * * * is thus whether the Secretary has either promulgated his own * * * requirement for Puget Sound tanker navigation or has

⁵ The Supreme Court has applied a similar standard in determining whether field pre-emption should be inferred from the comprehensiveness of a federal statutory scheme. *English v. General Electric Co.*, — U.S. —, 110 S. Ct. 2270, 2275 (1990).

decided that no such requirement should be imposed at all." 435 U.S. at 171-72.

Unlike the statutory scheme in *Ray v. Atlantic Richfield Co.*, *supra*, there are no statutory provisions which may be construed to pre-empt any state or local regulations requiring greater safety standards than those actually promulgated by the Secretary. Indeed, the only implication that can be drawn from the statutory scheme is to the contrary, see 49 U.S.C. app. 1811(b),⁶ and the Director expressly held in IR-22 that Congress did not intend to authorize the Secretary to pre-empt totally local regulation. IR-22 at 46,580.

Specifically, when Congress enacted the HMTA in 1974, it acted against a policy of "accordance deference to local safety regulations (because) local authorities are generally in the best position to consider problems unique to their area and to tailor their rules accordingly." *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663, 670-71 (S.D.N.Y. 1981), *aff'd sub nom. National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982); see *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443-44 (1978). While the Director concluded that Congress intended to give DOT the power to promulgate uniform national standards, IR-22 at 46,574, he observed that the express pre-emption clause of the HMTA provides only that "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is preempted." 49 U.S.C. app. 1811(a). Relying on this limitation, the Director expressly held that:

This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

IR-22 at 46,574 (emphasis added). The Director concluded that the most that

⁶ 49 U.S.C. app. 1811(b) provides that DOT may waive pre-emption of a local rule "not consistent" with the HMTA or the regulations issued thereunder "if, upon application of an appropriate State agency, the Secretary determines that such requirement (1) affords an equal or greater level of protection to the public than is afforded by this chapter or (by) regulations issued under this chapter and (2) does not unreasonably burden commerce." Section 1811(b) plainly implies that only "inconsistent" local regulations that provide for greater safety are preempted and it provides for a waiver even in such a case if the regulation does not unreasonably burden interstate commerce. See *City of New York v. United States Dep't of Transp.*, 715 F.2d 732, 752 n.21 (2d Cir. 1983), *cert. denied* 465 U.S. 1055 (1984).

could be said with respect to the intent of Congress was that "[w]hile the HMTA did not totally preclude State or local regulation in this area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary." IR-22 at 46,574-75.⁷

Presumably based on the premise that "Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action," *id.* at 46,574, on July 27, 1987, while the IR-22 proceeding was pending, the Secretary of Transportation proposed legislation that would have amended 49 U.S.C. app. 1804, the statute empowering the Secretary to promulgate regulations in this area, to expressly pre-empt "any State or political subdivision requirement" concerning, *inter alia*, "the designation, description, and classification of hazardous materials," "the packing, repacking, handling, labelling, marketing, and placarding of hazardous materials," "highway routing" of hazardous materials and "the design, fabrication, marking, maintenance, reconditioning, repairing or testing" of containers used in the transportation of hazardous materials. This proposed amendment to 49 U.S.C. app. 1804 was never enacted into law.⁸

IR-22, however, makes little effort to reconcile its conclusion that "Congress did not intend the HMTA and its regulations to completely occupy the field," and the Secretary's unsuccessful effort to obtain an express legislative mandate authorizing its exclusive regulation of the field, with its stated conclusion in IR-22 that the comprehensiveness of its regulation excludes even complementary and consistent local regulation.⁹

⁷ Consistent with this deference to local safety regulation, the Court of Appeals in *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270, 275 (2d Cir. 1982), employed a balancing test to reach the conclusion that local routing requirements are not pre-empted because they promote the HMTA's goals, are not in "direct conflict" * * * with the federal regulations such that compliance with both is a physical impossibility, * * * do not overlap with any specific directives of the Secretary, and are best issued by localities "far better equipped to do so."

⁸ The proposed legislation, accompanied by cover letters from the Secretary of Transportation, Elizabeth Dole, to the President of the Senate and the Speaker of the House, is annexed as Exhibit R to the Affidavit of Grace Goodman dated January 22, 1988.

⁹ In affirming the decision of the Director in IR-22, the Administrator of the Research and Special Programs Administration asserted that the submission of the proposed legislation "is not evidence of the need to seek a new statement of intention from Congress." Appeal at 26,701. According to the Administrator, the purpose of the legislative proposal "was to codify in the statute the

Moreover, the effort made by the Director in IR-22 to explain away the regulatory scheme promulgated under the HMTA, which expressly appears to allow for some local regulations intended to ensure the safe transportation of hazardous materials, is unconvincing. In examining the regulatory scheme, Judge Sifton cited the text of 49 CFR 178.340-1(b), which provides that cargo tank specification requirements are "minimum requirements," and held that, because the pre-emption provision of the FMCSR, 49 CFR 390.9 (formerly at 49 CFR 390.30 (1987)), does not preclude consistent local laws relating to safety, defendants' regulations are not pre-empted as a matter of law. Slip op. at 22, 24. Indeed, the Notice and Invitation to Comment published by OHMT prior to its ruling explicitly stated that "a state or local requirement concerning a subject addressed by the cited FMCSR provisions is preempted only if compliance with it and a provision of the FMCSR is impossible." Notice at 18,669.

IR-22, however, held that the minimum requirements clause of the HMR and the specified provisions of the FMCSR were intended to "provide discretion to carriers but (not to) constitute a grant of authority to State or local governments to impose additional * * * requirements on carriers of hazardous materials." IR-22 at 46,583. This reasoning is not persuasive. Standards set by the HMTA and the HMR are, as a matter of law, minimum requirements. While these standards may be exceeded by carriers, this can be accomplished only after compliance with specified procedures to ensure that the manner in which the carriers intend to ship hazardous materials are equal to or exceed the minimum level of safety provided for by the HMTA and the regulations issued under it. 49 U.S.C. app. 1806; 49 CFR 107.103.¹⁰

experience which the Department had gained in administering the HMTA since its passage, thereby reducing the potential for conflict between Federal and non-federal requirements". *Id.* This explanation simply amounts to bureaucratic double-talk. If the Secretary was satisfied that Congress intended to authorize DOT to displace all State and local regulation, a binding regulation to that effect could have been promulgated. There was no need to seek legislation to accomplish such a result.

¹⁰ Title 49 U.S.C. app. 1806(a) provides that:

The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this chapter, an exemption from the provisions of this chapter, and from regulations issued under section 1804 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of

Accordingly, if the minimum requirements clause of the HMR and the related FMCSR regulations are intended to "provide discretion to carriers" to adopt stricter standards than required by law, they do so in unusually awkward language that appears to be inadequate to accomplish their purpose. Indeed, a contrary definition of the term "minimum requirements," as it appeared in an act of Congress, was recently adopted by the Court of Appeals:

Use of the term "minimum" strongly suggests that Congress intended federal law in this area to supplement, not supplant, the rights and remedies provided by state law. Otherwise, the term "minimum requirements," rather than "maximum requirements," "exclusive requirements" or some similar phrase would make no sense in this context.

Appellees play down the Act's use of the term "minimum requirements" by arguing that all Congress intended was to leave room for manufacturers to adopt additional requirements voluntarily, not for the states to add requirements. We believe that the Act's other provisions, its legislative history and the (agency's) interpretations cited above do not support the view that the term "minimum requirements" gives leeway to manufacturers but not to anyone else.

Motor Vehicle Mfrs. Ass'n v. Abrams, 899 F.2d at 1319-20. This analysis seems particularly apposite here.¹¹

While a properly formulated statement of an agency's intent to exclusively occupy a field may normally be conclusive of that issue, provided that the agency "acted within the statutory authority conferred by Congress when it pre-empted state and local . . . standards," *City of New York v. F.C.C.*, 486 U.S. at 66; see *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 718 (1985), the relevant part of IR-22 upon which plaintiffs rely is not legally

such exemption, or (2) which would be consistent with the public interest and the policy of this chapter in the event there is no existing level of safety established. * * * Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the **Federal Register**. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application. * * *

¹¹ Whether the construction placed on the "minimum requirements" and related regulations in IR-22 is correct need not finally be resolved here because, even if these regulations were not intended to "constitute a grant to State or local governments to impose additional . . . requirements on carriers of hazardous materials," IR-22 at 46,583, they plainly do not exclude, or expressly articulate an intent to displace, local regulation. See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 147-48 (1963).

binding and is not entitled to deference because it employs an inappropriate inference of pre-emption that fails to reconcile persuasively its ultimate conclusion with DOT's interpretation of the limitations of the power that Congress vested in the Secretary and its own regulations and actions that appear to reflect these self-perceived limitations.

The Supreme Court's decision in *City of New York v. F.C.C.*, 436 U.S. 57 (1988), upon which plaintiffs rely, does not support their position. There the Supreme Court addressed the issue whether the FCC acted within the authority conferred upon it by Congress when it totally pre-empted local technical regulations pertaining to cable television. When it adopted the regulations at issue, the FCC specifically articulated its choice to pre-empt as follows:

Technical standards that vary from community to community create potentially serious negative consequences for cable system operators and cable consumers in terms of the cost of service and the ability of the industry to respond to technological changes. To address this problem, we proposed in the *Notice* to retain technical standards guidelines at the federal level which could be used, but could not be exceeded, in state and local technical quality regulations.

After a review of the record in this proceeding, we continue to believe that the policy adopted in 1974 was effective, should remain in force, and is entirely consistent with both the specific provisions and the general policy objectives underlying the 1984 Cable Act. This pre-emption policy has constrained state and local regulation of cable technical performance to Class I channels and has prohibited performance standards more restrictive than those contained in the Commission's rules. The reasons that caused the adoption of this policy appear to be as valid today as they were when the policy was first adopted. 50 FR at 52,464.

486 U.S. at 65. In concluding that this choice to pre-empt constituted a valid exercise of the power conferred by Congress under the Cable Act, the Supreme Court held:

We conclude here that the Commission acted within the statutory authority conferred by Congress when it pre-empted state and local technical standards governing the quality of cable television signals. When Congress enacted the Cable Act in 1984, it acted against a background of federal pre-emption on this particular issue. For the preceding 10 years, the Commission had pre-empted such state and local technical standards under its broad delegation of authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter" *** as a means of

implementing its legitimate discretionary power to determine what the "public convenience, interest, or necessity requires" in this field.

Id. at 66-67 (citations omitted).

The difference between *City of New York v. F.C.C.* and this case have already been alluded to earlier and do not require extended discussion. Unlike DOT in the present case, the FCC gave notice of its intent to pre-empt local law prior to the adoption of the regulations at issue, it made principled and persuasive findings relating to the exercise of its power at the time it promulgated the regulations, and the legislative history left no doubt that it acted within the statutory authority authorized by Congress. In almost every material respect, the opposite is true in the present case.

Conclusion

The Secretary of Transportation did not issue a binding regulation or a persuasive statement of policy warranting judicial deference, declaring that DOT's "authority to regulate is exclusive and pre-empts any state efforts to regulate in the forbidden area[.]" *City of New York v. F.C.C.* 486 U.S. at 64. In so concluding, I do not pass upon the determination of IR-22 that the New York City regulations actually conflict with the DOT regulations here at issue.

In IR-2, the leading inconsistency ruling in this area, the Director of OHMT held that there are "certain areas where the need for national uniformity is so crucial and the scope of Federal regulation is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the (HMR)," 44 FR 75,568 (1979). The Director, nevertheless, "envisioned" at least two "situations" where local regulation in federally regulated field did not present such an obstacle, *id.*, and he framed the ultimate task in the matter before him as examining "each of the Rhode Island requirements *** individually to determine if they are in direct conflict with a Federal requirement and if not whether they present an obstacle to the accomplishment and execution of the HMTA and the (HMR)." *Id.* at 75,569.

The application of this analysis to the New York City regulations at issue here could very well provide a basis for an inconsistency finding. Indeed, the Director makes a persuasive case for his finding that New York City regulations actually "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives" of the

HMTA and the regulations promulgated thereto. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Because of the limited ground upon which the motion for summary judgment is based, however, I hold only that the determination of field pre-emption based solely on comprehensiveness of DOT's regulations is not sufficiently persuasive to warrant judicial deference. Accordingly, plaintiffs' motion for summary judgment is denied.

At oral argument of the motion, plaintiffs indicated that, if their motion were denied, they would seek certification for an interlocutory appeal pursuant to 28 U.S.C. 1292(b) (1988). Although I am sympathetic to such an application, see *Baylis v. Marriott Corp.*, 843 F.2d 658, 662 (2d Cir. 1988), it should be made in a formal motion which specifically addresses the criteria set out in section 1292(b) and the effect that other challenged regulations, which were not subject to this motion, would have on the application of the statutory criteria.

Dated: Brooklyn, New York, October 17, 1990.

So Ordered:

Edward R. Korman,
U.S.D.J.

Appendix B—October 18, 1991 Order of the United States District Court for the Eastern District of New York

United States District Court, Eastern District of New York, National Paint . . . et al. vs. N.Y.C., et al.

ORDER

CV-84-4525

Korman, J.

Plaintiffs have requested partial summary judgement declaring that certain provisions of the City of New York's (City's) Fire Prevention Directives (FPDs) are preempted pursuant to the Hazardous Materials Transportation Act, as amended 49 U.S.C. app. 1801 *et seq.* The parties have agreed and the Court finds that the FPDs in the covered subject areas of 49 U.S.C. app. 1804(a)(4)(B) are preempted and enjoined from further enforcement.¹ Those provisions of the FPDs which the parties agree and the Court finds are preempted are: FPD 7-74 (revised 6/30/88) except Sections 2, 26-2, 28-8, 32, and 33; FPD 6-76 (revised 6/30/88) except Sections 2, 25, 26-3(a), 26-3(b), 26-3(c) 27, and 28; FPD 5-63 (revised 5/11/83) except Sections 2, 3, 6.1 and 7; and FPD

¹ This order does not affect the City's regulations on highway routing and permissible hours of travel certification of drivers of hazardous materials vehicles or provisions in the FPDs that do not deal with transportation.

3-76 (3/7/83) except Sections 12, 14-3(a), 14-3(b), 14-3(c), 15 and 16.

With respect to the FPD provisions set forth in the application of the City to the United States Department of Transportation dated October 10, 1991, for a waiver of preemption,² this

² These sections involve, in brief, (a) capacity limits on tank truck shipments, (b) requirements that tank trucks be constructed of steel and contain compartments and baffles, (c) that flammable

injunction is stayed for a period of 150 days from October 18, 1991. The City may petition the Secretary of Transportation for further relief.

Citations or notices of violations issued under those provisions for which waiver of preemption is being sought

liquids not be transported in semi-trailers nor gases or combustible liquids in full trailers, and (d) a requirement that trucks be inspected annually and carry a permit evidencing such inspection.

will not be prosecuted by the City during the 150 day period.

Dated: Brooklyn, New York, October 18, 1991.

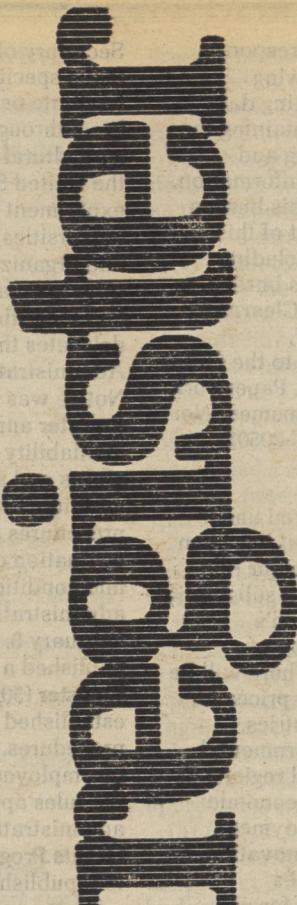
So Ordered.

Edward R. Korman,
U.S.D.J.

[FR Doc. 91-27325 Filed 11-14-91; 8:45 am]

BILLING CODE 4910-60-M

Friday
November 15, 1991



Part III

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3400 Special Research Grants Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****7 CFR Part 3400****Special Research Grants Program;
Administrative Provisions****AGENCY:** Cooperative State Research Service, USDA.**ACTION:** Final rule; amendment.

SUMMARY: This final rule amends the Cooperative State Research Service (CSRS) regulations relating to the administration of the Special Research Grants Program, which prescribe the procedures to be followed annually in the solicitation of special research grant proposals, the evaluation of such proposals, and the award of special research grants under this program. This rule amends those regulations by providing CSRS the option of selecting different proposal evaluation criteria for specific program areas, by providing for an increased avenue for publication of requests for grant proposals, by providing for the grant document to state the conditions under which a grantee may approve changes to an approved budget, by indicating that the format for research grant proposals applies unless otherwise stated in the program solicitation, by adding references to applicable regulations pertaining to lobbying, debarment and suspension (nonprocurement), debt collection, and drug-free workplace, and by making a few additional changes.

EFFECTIVE DATE: November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, Director, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, United States Department of Agriculture, room 322, Aerospace Center, Washington, DC 20250-2200. (Telephone (202) 401-5024).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction**

The Office of Management and Budget has previously approved the information collection requirements contained in the current regulations at 7 CFR part 3400 under the provisions of 44 U.S.C. chapter 35 and OMB Document No. 0524-0022 has been assigned. The information collection requirements of the final rule at 7 CFR part 3400 has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980. Public reporting burden for the information collections contained in these regulations is estimated to vary

from ½ hour to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W,

Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Document No. 0524-0022), Washington, DC 20503.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534 (5 U.S.C. 601 *et seq.*).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended. (42 U.S.C. 4321 *et seq.*).

Catalog of Federal Domestic Assistance

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 2(c)(1)(A) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(c)(1)(A)), the

Secretary of Agriculture is authorized to make special grants for research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. 7 CFR 2.107(a)(3) delegates this authority to the Administrator of CSRS. In the past, a Notice was published in the **Federal Register** annually announcing the availability of funds for special research grants and soliciting proposals. In addition, the Notice set forth the procedures and criteria for the evaluation of proposals and procedures and conditions relating to the award and administration of these grants. On February 8, 1985, the Department published a Final Rule in the **Federal Register** (50 FR 5498-5504), which established and codified such procedures, criteria, and conditions to be employed annually. It standardized the rules applicable to the administration of the Special Research Grants Program and eliminated the need to republish them annually.

On December 8, 1988, the Department published a Final Rule amendment in the **Federal Register** (53 FR 49640-49642), which amended and codified those regulations to facilitate the evaluation of applications and the award of project grants by modifying the weight factors associated with the selection criteria and by making a few additional changes. On July 1, 1991, the Department published a Notice in the **Federal Register** (56 FR 30256-30263) proposing the amendment of this Rule and inviting comments from interested individuals and organizations. Written comments were requested by July 31, 1991. No comments were received. CSRS has made additional minor changes to the Proposed Rule published in the **Federal Register** on July 1, 1991. These additional changes are of a clarifying or clerical nature. CSRS is publishing these regulations in one document for easy access and reference by the public and CSRS.

List of Subjects in 7 CFR Part 3400

Grants programs—agriculture, Grants administration.

For the reasons set out in the preamble, title 7, chapter XXXIV, part 3400 of the Code of Federal Regulations, is revised to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.

3400.1 Applicability of regulations.

3400.2 Definitions.

3400.3 Eligibility requirements.

3400.4 How to apply for a grant.

3400.5 Evaluation and disposition of applications.

3400.6 Grant awards.

3400.7 Use of funds; changes.

3400.8 Other Federal statutes and regulations that apply.

3400.9 Other conditions.

Subpart B—Scientific Peer Review of Research Grant Applications

3400.10 Establishment and operation of peer review groups.

3400.11 Composition of peer review groups.

3400.12 Conflicts of interest.

3400.13 Availability of information.

3400.14 Proposal review.

3400.15 Review criteria.

Authority: Sec. 2(h) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(h)).

Subpart A—General

§ 3400.1 Applicability of regulations.

(a) The regulations of this part apply to special research grants awarded under the authority of section 2(c)(1)(A) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(c)(1)(A)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Each year the Administrator of CSRS shall determine and announce, through publication of a Notice in such publications as the *Federal Register*, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3400.2 Definitions.

As used in this part:

(a) *Administrator* means the Administrator of the Cooperative State Research Service (CSRS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the

grantee in the grant application and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Administrator for conducting the research project as outlined in an approved grant application.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, whose written evaluations of grant applications are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

§ 3400.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any State agricultural experiment station, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals, shall be eligible to apply for and to receive a special research project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal Government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3400.4 How to apply for a grant.

(a) A request for proposals will be prepared and announced through publications such as the *Federal Register*, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare special research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

- (4) Number of copies to be submitted;
- (5) Forms required to be used when submitting proposals; and
- (6) Special requirements.

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following applies:

(1) *Grant Application.* All research grant proposals submitted by eligible applicants should contain a Grant Application form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures or methodology to be applied to the proposed research plan should be explicitly stated. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification.* This section should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem.

(ii) The importance of starting the work during the current fiscal year, and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, which are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be fully explained, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which proposer is to receive any resulting grant award, since only one eligible applicant, as provided in § 3400.3 of this part, may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be clearly identified. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of all key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publications listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Application Kit identified under § 3400.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of special research grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving

Recombinant DNA Molecules," as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.*

Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Special Research Grants Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et. seq.*) and the regulation promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable of such certification.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors,

including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the

Administrator or experts or consultants engaged by the Administrator for this purpose. The Grant Application Kit, identified above in § 3400.4(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Administrator, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3400.4(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a research project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3400.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received and whose

general roles are defined in §§ 3400.2(j) and 3400.2(k). Specific evaluations will be based upon the criteria established in subpart B § 3400.15, unless CSRS determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Administrator can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will

(1) Approve support using currently available funds,

(2) Defer support due to lack of funds or a need for further evaluations, or

(3) Disapprove support for the proposed project in whole or in part.

With respect to approved projects, the Administrator will determine the project period (subject to extension as provided in § 3400.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3400.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Administrator as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's "Uniform Federal

Assistance Regulations" (part 3015 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award document*. The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded a special research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award*. The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments*. The major categories of grant instruments shall be as follows:

(1) *Standard grant*. This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant*. This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument.

Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant*. This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal Government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the food and agricultural sciences, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document will normally be awarded for an initial one-year period and any subsequent continuation research project grants will also be awarded in one-year increments. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; a Grant Application; a proposed budget for the ensuing period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years will usually be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original special research grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally

reviewed and approved), additional reviews may be required prior to approving continued funding.

(4) *Supplemental grant*. This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal Government*. Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3400.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility*. The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans*. (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Administrator for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the

Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of the grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3400.5(b) may be extended by the Administrator without additional financial support, for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed five (5) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3400.8 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular A-129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A-110, A-21, and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments, implementing OMB directives (i.e., Circular Nos. A-102 and A-87).

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3407—CSRS procedures to implement the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3400.9 Other conditions.

The Administrator may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Administrator's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Administrator will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

§ 3400.11 Composition of peer review groups.

(a) Peer review group members will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual;

(2) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator,

assistant), and the quality of such research;

(3) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(4) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(5) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(6) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3400.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part O of this title), and Executive Order 11222, as amended.

§ 3400.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental regulations (part 1 of this title).

§ 3400.14 Proposal review.

(a) All research grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals which do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be carefully reviewed by the Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to

recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) No awarding official will make a research project grant based upon an application covered by this part unless the application has been reviewed by a peer review group and/or *ad hoc* reviewers in accordance with the provisions of this part and said reviewers have made recommendations concerning the scientific merit of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3400.15 Review criteria.

(a) Subject to the varying conditions and needs of States, Federal funded agricultural research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Continue to satisfy human food and fiber needs;

(2) Enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy;

(3) Expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens, and society as a whole;

(4) Improve the productivity of the American agricultural system and

develop new agricultural crops and new uses for agricultural commodities;

(5) Develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or

(6) Enhance human health.

In carrying out its review under § 3400.14, the peer review group will use the following form upon which the evaluation criteria to be used are enumerated, unless pursuant to § 3400.5(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program.

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines?

Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1-10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal _____				
2. Scientific and technical quality of the approach _____	10		10	

	Score 1-10	Weight factor	Score X weight factor	Comments
3. Relevance and importance of proposed research to solution of specific areas of inquiry _____				
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment _____		6	6	

Score _____

Summary Comments _____

(b) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Done at Washington, DC, this 7th day of November, 1991.

C.I. Harris,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 91-27407 Filed 11-14-91; 8:45 am]

BILLING CODE 3410-22-M



Part IV

Department of the Interior

Bureau of Indian Affairs

Availability of Fiscal Year 1992 Special Tribal Court Funds; Notice



DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Availability of Fiscal Year 1992 Special Tribal Court Funds**

November 1, 1991.

AGENCY: Bureau of Indian Affairs, Interior.**ACTION:** Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) invites submission of applications from Indian tribes and/or Indian judicial systems for FY 1992 Special Tribal Court funds. The purpose of the FY 1992 Special Tribal Court program is to enable Indian tribes to improve their capabilities to manage and administer justice at a level which will insure the speedy and impartial adjudication of violations of tribal law and the resolution of disputes. Funding awards will be made on a competitive basis under criteria, terms and conditions set forth in this announcement.

EFFECTIVE DATES: The closing date for submission of proposals under this announcement is December 16, 1991.

FOR FURTHER INFORMATION CONTACT:
Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street NW., mail stop 2612-MIB, Washington, DC 20240-4001; telephone (202) 208-4400 or FTS 268-4400.

SUPPLEMENTARY INFORMATION:**(A) Scope of FY 1992 Special Tribal Court Program**

The purpose of the Special Tribal Court program is to improve and maintain the judicial capabilities of Indian tribes at a level which will insure the speedy and impartial adjudication of violations of tribal law and the resolution of civil disputes. To accomplish this purpose the BIA is interested in funding projects that:

1. Seek to develop approaches to improve the operation of the tribal court at both the trial and appellate levels, including the development of such management techniques as processing time standards, caseload management techniques, juror usage policies and other procedures designed to improve the management capability of the court; or

2. Examine court related issues concerning the problems of alcohol and substance abuse and the development of management techniques for handling the increasing volume of such cases fairly and expeditiously; or

3. Seek to address other special or unique problems through development of court-based programs and procedures including the development of tools to

assist judges in making dispositional and treatment decisions.

(B) Eligibility Criteria

The governing body of an Indian tribe with an established judicial system, or a newly created tribal court, or a tribe intending to establish a judicial system may apply for funding under this announcement. Tribes with populations of less than 400 may apply for funding under a multi-tribal or consortium arrangement.

(C) Other Conditions

1. Approximately \$1,000,000 will be available under this announcement. Funding awards will range in amounts of \$10,000 to \$35,000 for individual tribes and from \$20,000 to \$50,000 for multi-tribal or consortium awards.

2. Incomplete and/or unresponsive applications will not be reviewed or rated and there shall be no appeal rights for non-funding of such applications. An incomplete and/or unresponsive application may be an application without a current tribal governing body or council resolution; an agency or area office recommendation; or an application seeking ordinary, routine operational costs for a court system.

APPLICATION PROCESS**(A) Content of Application**

1. Applications for funding in response to this announcement shall follow the application requirements set forth in the Office of Management and Budget Circular A-102, Uniform Requirements for Assistance to State and Local Governments, and attachments prescribed by such circular. Under Part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(a) A citation of the program area to be addressed by the proposed project;

(b) A statement of specific needs and or problems to be addressed by the project and what approach will be taken to meet such needs;

(c) A description of the expected products/benefits to be derived from the project and how they relate to the BIA's objective to improve and maintain the judicial capability of Indian judicial systems;

(d) A description of key staff required, if any, and a summary description of their qualifications;

(e) A budget justification which reflects how the project's costs are reasonable in view of the anticipated results and benefits;

(f) A statement indicating how other available resources such as tribal income, self-determination grants or

contracts will be committed to supplement or support the project;

(g) The application must include a tribal resolution or endorsement or such other written expression as tribal laws or practice required. In addition, all applications must include letters of recommendation/support from the local BIA agency and area offices.

2. Application Review. All applications will be received and rated at the BIA central office by review panels composed of BIA field and central office personnel.

(a) Applications will be reviewed and rated on the basis of the criteria set forth below:

(1) **Objectives and Need for Assistance (15 points)**—Applications should reflect a good understanding of the objectives of the project; describe the problem within the context of the services now available and services unavailable in the community; state the principal objectives and expected outcomes of the project.

(2) **Results or Benefits Expected (15 points)**—Applications should identify the results and benefits to be derived from the project; describe the population to be targeted and the number of persons expected to benefit and describe types of services to be provided;

(3) **Approach (40 points)**—The application should outline a sound and workable plan of action; the application should identify activities to be carried out and show a reasonable schedule of accomplishments and target dates; the application should describe the methodology that will be used to determine if the needs identified have been met and results achieved; the application should relate the work plan to the criteria to be used to evaluate the results and impact of the project.

(4) **Staff Qualifications (10 points)**—Application describes the background experience, training and qualifications of the key staff; describes how prospective staff will be recruited and selected and whether any particular mix of background, skills or personal qualities is proposed and their responsibilities in conjunction with this project.

(5) **Organizational Experience (10 points)**—The application should describe significant organizational experience in administering funds including a description of the financial system to be used to monitor project expenditures.

(6) **Budget Justification (10 points)**—The application should demonstrate that the project's costs are reasonable in view of the expected results and

benefits. The budget narrative should provide the basis for the computation of all project-related costs.

3. Submission of Applications:

Applications submitted in response to this announcement must be postmarked no later than midnight, December 16, 1991, if mailed; if hand delivered applications must be received in the Branch of Judicial Services no later than the close of business December 16, 1991.

An original application and two (2) copies must be mailed or hand delivered to: Department of the Interior, Bureau of Indian Affairs, Attention: Branch of Judicial Services, MS-2612-MIB, 1849 C Street NW., Washington, DC 20240-4001.

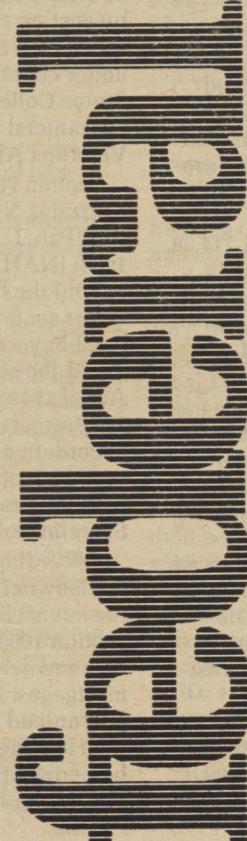
Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 91-27439 Filed 11-14-91; 8:45 am]

BILLING CODE 4310-02-M

Friday
November 15, 1991



Part V

**Department of
Housing and Urban
Development**

**Office of the Assistant Secretary for
Housing—Federal Housing Commissioner**

**24 CFR Part 214
Housing Counseling Program; Proposed
Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 214

[Docket No. R-91-1554; FR-2753-P-01]

RIN 2502-AE92

Housing Counseling Program

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

ACTION: Proposed rule.

SUMMARY: For a number of years, the Department of Housing and Urban Development has conducted a housing counseling program, as authorized by the Housing and Urban Development Act of 1968, to assist homeowners and tenants in improving their housing conditions and in meeting the responsibilities of homeownership and tenancy. To date, the housing counseling program has been administered by the Department under HUD Housing Counseling Handbook No. 7610.1 (revised January 1976, and September 1990) (Handbook). The Department has decided to codify its housing counseling program into its permanent regulations. This proposed rule would adopt, without substantive change, the housing counseling program requirements and procedures set forth in the Handbook under which the Department currently administers the program. This proposed rule also would implement sections 577 and 706(c) of the Cranston-Gonzalez National Affordable Housing Act of 1990, which concern housing counseling. The specific provisions of the proposed rule are more fully discussed in the Supplementary Information portion of this Notice.

DATES: Comment Due Date: January 14, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone

number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084 or (202) 708-3259 (TDD). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, Director, Single Family Servicing Division, Room 9178, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone: (202) 708-1672. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements for the Housing Counseling Program, as administered under HUD Housing Counseling Handbook No. 7610.1 REV-2 (September 1990) have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Numbers 2502-0261 and 2502-0260. Under the proposed rule, the paperwork burden would be reduced. Approved agencies would be required to file an annual report instead of a semi-annual report, and approved agencies that are also grantees would be required to file a semi-annual report instead of a quarterly report. (See proposed § 214.38, as set forth in this rule.) Accordingly, under the proposed rule, the estimated paperwork burden for each of these reports would be reduced by half.

Statutory Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (section 106) authorizes the Department of Housing and Urban Development (HUD) to provide a program of housing counseling services to designated homeowners and tenants (Housing Counseling Program). The program authorized by section 106 is divided into two distinct components: The housing counseling program services and requirements provided under section 106(a) (12 U.S.C. 1701x(a)), and those services and requirements provided under section 106(c) (12 U.S.C. 1701x(c)).

1. Housing Counseling Under Section 106(a)

Section 106(a) authorizes HUD to provide, or to contract with public or private organizations to provide, a program of budget, debt management and related counseling to homeowners of housing insured under sections 235 and 237 of the National Housing Act.

Section 811 of the Housing and Community Development Act of 1974 amended section 106(a) to include tenants as recipients of HUD's housing counseling services; to extend the program to all HUD assisted housing; and to provide for additional counseling services. (See 12 U.S.C. 1701x(a)(iii).) Section 811 also vested the Secretary of HUD with the discretionary authority to make grants, and provide other types of assistance, to private or public organizations to aid these organizations in delivering the counseling services authorized by section 106(a)(iii). (The financial assistance authorized by section 811 is referred to as section 106(a) assistance.)

Section 1009 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) amended section 106(a) to provide the Secretary with the authority to extend access to the housing counseling services authorized by section 106(a)(iii) to homeowners with home loans insured or guaranteed under chapter 37 of title 38, United States Code (i.e., home loans insured or guaranteed by the Department of Veterans Affairs).

Section 706(c) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 628, approved November 7, 1988) (NAHA) amended section 106(a) to extend the housing counseling services under section 106(a)(iii) to first-time homebuyers with guaranteed loans under the section 502(h) of the Housing Act of 1949 (i.e., home loans insured by the Farmers Home Administration). (In accordance with the provisions of section 706(c) of the NAHA, this proposed rule was reviewed by the Secretary of Agriculture.)

Accordingly, with respect to homeowners, section 106(a) states that the counseling services authorized by section 106(a) shall be provided to homeowners with HUD-insured mortgages; first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949; and homeowners with loans guaranteed or insured by the Department of Veterans Affairs.

2. Housing Counseling Under Section 106(c)

Section 169 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 106 to add a new statutory subsection (subsection (c)), titled "Grants for Homeownership Counseling Organizations" (section 106(c); 12 U.S.C. 1701x(c)).¹ This subsection added a new program component to the Housing Counseling Program—housing counseling solely for certain eligible homeowners. Section 106(c) also authorized financial assistance, in the form of grants (section 106(c) assistance), to housing counseling agencies providing homeownership counseling to these homeowners. Section 106(c) sets forth the criteria under which housing counseling agencies may be eligible for section 106(c) assistance. Section 106(c) provides that housing counseling agencies receiving section 106(c) assistance, shall use the assistance only to provide homeownership counseling to eligible homeowners.

Section 106(c) defines "eligible homeowner" to include a homeowner whose home loan is secured by property that is the principal residence (as defined by the Secretary of HUD) of the homeowner, and is unable to correct a home loan delinquency within a reasonable time (12 U.S.C. 1701x(c)(4)). Section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property. Because section 106(c) did not limit eligibility for homeownership counseling to homeowners whose mortgages or liens are HUD-insured, section 106(c) has been interpreted to extend the homeownership counseling component of the Housing Counseling Programs to homeowners with conventional mortgages, i.e., mortgages not HUD-insured. (See 54 FR 20964.) However, section 106(c) does exclude, as eligible homeowners, homeowners whose home loans are assisted under title V of the Housing Act of 1949 (Rural Housing Act) (i.e., home loans insured by the Farmers Home Administration.) (Section 706(c) of the NAHA only amended section 106(a). Section 706(c) did not amend section 106(c) to include homeowners with loans guaranteed by the Farmers Home Administration as eligible homeowners under the homeownership counseling program created by section 106(c).)

¹ Although, originally only effective until September 30, 1990, section 577 of the Cranston-Gonzalez National Affordable Housing Act extended the effective date of Section 106(c) until September 30, 1992.

Section 106(c) also imposes a requirement on creditors to notify eligible homeowners, as defined by section 106(c), of the availability of any homeownership counseling offered by the creditor, and of the availability of homeownership counseling provided by nonprofit organizations approved by HUD. (See section 106(c)(5), 12 U.S.C. 1701x(c)(5).)

Section 577 of the NAHA extended the effective date of section 106(c) until September 30, 1992. (See footnote 1.) Section 577 also authorized HUD, to the extent of amounts approved in appropriations acts, to enter into an agreement with an appropriate private entity under which any eligible homeowner, as defined in section 106(c), by calling a toll-free telephone number, can obtain a list of HUD-approved housing counseling agencies that serve the area in which the eligible homeowner resides. Section 577 also amended section 106(c) to clarify that the notification provisions of section 106(c) do not apply to homeowners with VA insured or guaranteed loans. The greater part of section 577, however, provides for the implementation of a prepurchase and foreclosure demonstration program in three counseling target areas, to be designated by the Secretary of HUD. Because the demonstration program is a temporary program (the program expires at the end of Fiscal Year 1994), the provisions of section 577 implementing the demonstration program are not part of this rulemaking.

Housing Counseling—Existing and Proposed Program

To date, HUD has administered the housing counseling program in accordance with the procedures set forth in HUD Housing Counseling Handbook No. 7610.1 (revised January 1976 (Rev-1) and September 1990 (Rev-2)) (Handbook). The proposed rule would codify, without substantive change, these procedures by adding a new part 214 to HUD's regulations. Certain program terms and forms referenced in the Handbook and familiar to program participants may have been deleted in this proposed rule or substituted with other terms or forms. However, the procedures governing the application and approval process, the delivery of counseling services, the review of an agency's operation by HUD, and the award of grants, as currently administered under the Handbook, remain unchanged.

HUD believes that codification of the requirements and procedures governing its housing counseling program will

provide for more effective administration of the program and will produce a program more responsive to the needs and problems of the targeted clientele.

Provisions of Proposed Rule

Subpart A explains the purpose, scope and objectives of the rule and defines the major terms used in part 214. Subpart B lists requirements that an agency must meet to be approved by HUD as a housing counseling agency, and describes the approval process. Subpart C contains general provisions governing the approved agency's services and practices. Subpart D contains provisions governing HUD's monitoring of approved agency operations. Subpart E describes the procedures governing reapproval, withdrawal of approval and appeals of HUD decisions. Subpart F describes sources of funding available to housing counseling agencies, other than Congressional appropriations for housing counseling. Subpart G describes the procedures by which HUD awards grants to approved housing counseling agencies.

Subpart H advises creditors of their responsibilities under section 106(c)(5) to notify eligible homeowners with delinquent home loans of the availability of homeownership counseling services. As discussed above, section 106(c), as amended by the NAHA, provides for HUD to enter into an agreement with an appropriate private entity under which the entity will operate a toll-free telephone number through which any eligible homeowner, as defined in section 106(c), can obtain a list of HUD-approved housing counseling agencies that serve the area in which the eligible homeowner resides. HUD has initiated the process of locating, and contracting with, an appropriate private entity to operate a toll-free telephone number, as authorized by section 106(c). Once this toll-free telephone number is operational, it will be announced by separate notice published in the *Federal Register*.

Procedural Matters

In accordance with section 102 of the Housing and Urban Development Reform Act of 1989, subpart G will be implemented by means of notices of funding availability (NOFAs) published periodically in the *Federal Register*. In addition, § 214.70(b) and subpart H, which implement the provisions of section 106(c), will expire after September 30, 1992, unless extended by the Congress.

Other Matters*Impact on the Economy*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule 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, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide for additional guidance and assistance to counseling agencies that already provide housing counseling services to homeowners and tenants. The notification requirements imposed by subpart H of the rule would have some economic impact on a substantial number of small entities. However, the economic impact on each individual entity is insignificant, because it is measured in terms of the burden of requiring each lender to pass on minimal homeownership counseling information to its borrowers. Since the duty to provide this counseling information is not limited, by the statute, to particular lenders based on their size, there is no basis in the statute for providing a reduced burden on small lenders.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Agenda

This rule is listed as sequence number 1374 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53401) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on the States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Executive Order, 12806, The Family

The General Counsel, as the Designated Official under Executive Order 12806, The Family, has determined that this rule may have the potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of the housing counseling agencies, approved by the Department under the rule, will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.169.

List of Subjects in 24 CFR Part 214

Housing counseling, Nonprofit organizations, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations would be amended by adding a new part 214 to read as follows:

PART 214—HOUSING COUNSELING PROGRAM**Subpart A—General**

Sec.

- 214.1 Purpose and scope.
- 214.3 Program objectives.
- 214.5 Definitions.
- 214.7 Information: filings and verification.

Subpart B—Approval of Housing Counseling Agencies

- 214.10 General.
- 214.12 Organizational requirements.
- 214.14 Required agency practices.
- 214.16 Preliminary application.
- 214.18 Post-filing conference.
- 214.20 Final application.
- 214.22 Approval by HUD.

Subpart C—Counseling Services and Performance Requirements of Approved Agencies

- 214.30 Counseling services.
- 214.32 Performance requirements.
- 214.34 Agency organizational and service changes.
- 214.36 Recordkeeping.
- 214.38 Reporting.

Subpart D—Program Administration

- 214.40 HUD Field Office assistance and monitoring.
- 214.42 Biennial performance review.

Subpart E—Reapproval, Withdrawal or Termination of Approval Status, and Appeal Rights

- 214.50 Reapproval.
- 214.52 Withdrawal or termination of approval status.
- 214.54 Appeal rights.

Subpart F—Financial Resources

- 214.60 Funding sources.
- 214.62 Counseling fees.

Subpart G—Grant Program

- 214.70 Grant assistance under section 106.
- 214.72 Grants: notification, application and selection process.
- 214.74 Grant program.

Subpart H—Responsibilities of Creditors of Certain Home Loans

- 214.80 Purpose and applicability.
- 214.82 Definitions.
- 214.84 Homeownership counseling: notification by creditors.
- 214.86 Creditor homeownership counseling.

Authority: Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Subpart A—General**§ 214.1 Purpose and scope.**

(a) **Purpose.** This part implements the Housing Counseling Program authorized by section 106 of the Housing and Urban Development Act of 1968. Section 106 authorizes the Department of Housing and Urban Development (HUD) to provide, or contract with public or private organizations to provide, a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of homeownership or tenancy. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling Program will be implemented and administered.

(b) **Scope.** Under current law (12 U.S.C. 1701x), virtually all defaulting homeowners and tenants are eligible to receive counseling under this part. Certain HUD housing programs may require participation in the Housing Counseling Program. Accordingly, the

regulations governing individual HUD housing programs should be consulted.

§ 214.3 Program objectives.

The objectives of the Housing Counseling Program are to:

(a) Assist existing and potential homeowners and tenants in resolving their housing needs and housing-related problems, and in understanding their rights and responsibilities as homeowners and tenants; and

(b) Reduce losses, and related costs, to the single family and multifamily mortgage insurance funds by reducing the number of mortgage defaults, foreclosures, rent delinquencies and evictions.

§ 214.5 Definitions.

As used in this part:

Applicant means an agency or organization seeking approval by HUD as a HUD-approved housing counseling agency.

Approved housing counseling agency or *approved agency* means a nonprofit private or public entity, or a unit of state or local government, approved by HUD under the provisions of subpart B of this part to provide housing counseling to homeowners, tenants and housing consumers.

Client means:

(1) A person, family, or group of persons who has a housing need or housing problem potentially resolvable under a HUD program;

(2) A potential or present homebuyer, homeowner or tenant of a property that is, or will be HUD-assisted, or financed by a HUD-insured mortgage;

(3) A first-time homebuyer with a guaranteed loan under section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h));

(4) A homeowner with a home loan guaranteed or insured under Chapter 37 of title 38, United States Code (i.e., guaranteed or insured by the Department of Veterans Affairs); or

(5) An "eligible homeowner" as defined in § 214.82.

Counseling means informing, advising and assisting clients on all appropriate areas of housing, including, but not limited to, rent delinquency, mortgage default, money management, rental and purchase procedures, housing selection, home improvement and rehabilitation, home and property management, HUD housing programs, tenant and homeowner rights and responsibilities. "Counseling" also includes identifying alternative housing resources which may be available to assist clients with their housing needs and housing problems.

Creditor means a person or entity that is servicing a home loan on behalf of itself or another person or entity.

Government Technical Monitor (GTM) means the HUD Field Office staff person who oversees and monitors the grant activities of grantees within the jurisdiction of the Field Office.

Government Technical Representatives (GTR) means the HUD Regional Office staff person who monitors the housing counseling grant program within the Region.

Grant agreement means the document signed by HUD and an approved agency which outlines the obligations of the agency upon the receipt of an award from HUD.

Grant Officer means the HUD official designated the authority to award and administer grants. For the housing counseling program, the Regional Contracting Officer (RCO) serves as the Grant Officer.

Grantee means the approved agency that receives housing counseling funds from HUD under the grant award process set forth in subpart G of this part.

Home loan means a loan secured by a mortgage or lien on residential property.

Homeowner means person or group of persons who is obligated under a home loan.

Housing consumer means a potential or existing tenant or homeowner.

Housing need means a client's lack of affordable, decent, safe and sanitary housing.

Housing problem means a circumstance that impairs a client's occupancy in affordable, decent, safe and sanitary housing, such as the possibility of a foreclosure, in the case of a homeowner, or eviction, in the case of a tenant.

HUD means the United States Department of Housing and Urban Development, including its Regional and Field offices.

HUD-related client means a client who occupies, or is eligible for, and seeks to occupy housing under a program administered by HUD.

Program means the Housing Counseling Program authorized by section 106 of the Housing and Urban Development Act of 1968, as implemented and administered under this part 214.

Secretary means the Secretary of the Department of Housing and Urban Development or the Secretary's authorized representative.

Section 106 means section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x).

Tenant means a person who rents real property or expresses a documentable interest in renting property.

§ 214.7 Information: filings and verification.

(a) *Filings*. Unless specifically noted otherwise, all information requested of an applicant or of an approved agency in this part shall be submitted on designated forms and shall be filed with the HUD Field Office in the state in which the applicant or agency performs its counseling services. Application forms, and form reports and notices referred to in this part, are available from each HUD Field Office.

(b) *Verification of information*. All information filed in connection with the application process described in subpart B of this part, or in connection with any report or notice required of an approved agency, is subject to investigation and verification by HUD. Any material misrepresentation or omission of facts in the application, or in any report or notice or supporting material, will result in disapproval of the application, or in withdrawal of approval, by HUD.

Subpart B—Approval of Housing Counseling Agencies

§ 214.10 General.

An applicant may be approved by HUD as a HUD-approved housing counseling agency upon meeting the requirements enumerated in §§ 214.12-214.14, and upon completing the application process set forth in this subpart B, which consists of submission of a preliminary application, a post-filing conference and submission of a final application. An applicant approved under this subpart B does not automatically receive funding from HUD. Approved agencies must apply for grants under the procedures prescribed in subpart G of this part.

§ 214.12 Organizational requirements.

To be eligible for approval under this subpart, an applicant must meet the following organizational requirements and, upon submission of its preliminary application, must provide documentation, as specified by the application form, of how each requirement has been met:

(a) *Nonprofit status*. The applicant must be either a public or private nonprofit organization.

(b) *Community base*. The applicant must have served successfully as a housing counseling agency, in the geographical area that it proposes to serve as an approved agency, for at least one year before the date of the preliminary application.

(c) *State and local requirements.* The applicant must meet all State and local requirements for operation as a housing counseling agency.

(d) *Audit.* The applicant must have had an independent audit of its financial records during the 12 months preceding the date of the filing of the preliminary application. If an applicant has had more than one audit during this 12-month period, the applicant must submit a copy of the most recent auditor's report.

(e) *Recordkeeping and reporting.* The applicant must have an established system of recordkeeping so that data easily can be reported to HUD and reviewed by HUD in relation to housing counseling services.

(f) *Funding.* The applicant must have sufficient funds on hand, or a written commitment for funds, to cover the cost of operating the counseling program during the initial 12-month period following approval. Applicants that plan to charge fees for services rendered under the Program must comply with § 214.62.

(g) *Staff.* The applicant must employ staff who meet the following qualifications:

(1) *Experience.* Management and counseling staff members must have at least six months of experience in the job that each management or counseling staff person will perform.

(2) *Knowledge of HUD programs.* The counseling staff must have working knowledge of HUD housing programs (including public housing), and the housing programs available in the local and community housing market.

Working knowledge means the ability to advise a client in detail about the various components of the particular housing program of interest to the client, or with which the client is already involved, including, but not limited to, the eligibility requirements of the program, the program application process, and the rights of responsibilities of the particular transaction involved, such as leases, mortgages, notes, contracts, etc.

(3) *Language skills.* The applicant's counseling staff must include counselors who are fluent in the language spoken by the clientele served by the applicant, or, alternatively, the applicant must provide the services of an interpreter.

(h) *Counseling facilities.* The applicant's counseling facility must meet the following requirements:

(1) *Location.* The facility must be located in the community of the targeted clientele and within easy walking distance (15 minutes) to public transportation.

(2) *Privacy.* The facility must provide for counseling areas that allow for a private one-on-one session between a counselor and a client.

(3) *Accessibility.* The facility must be physically accessible to handicapped and elderly clients, or the applicant's counseling staff must be willing to meet with handicapped or elderly clients at a physically accessible location.

(4) *Hours of operation.* The facility must be open during normal work hours.

(i) *Liaison with community resources.* The applicant must have established working relationships with private and public community resources to which it will refer clients who need assistance that the applicant is unable to provide.

§ 214.14 Required agency practices.

An applicant must certify to HUD, at the time of submission of its preliminary application, that it complies with the following practices:

(a) *Nondiscriminatory practices.* The applicant operates its facility and administers its counseling services in accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (nondiscrimination in federally assisted programs), the Fair Housing Act (42 U.S.C. 3601-3620), Executive Order 11063 (Equal Opportunity in Housing), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (nondiscrimination against handicapped individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (nondiscrimination on the basis of age).

(b) *Subcontracting.* The applicant administers its housing counseling services through its own counseling staff and does not subcontract for the delivery of such services. (This prohibition does not preclude an approved agency from referring clients to other community resources for assistance as provided by § 214.12(i).) The only exception to this provision may occur under housing counseling demonstration programs for which HUD has granted prior approval for a subcontracting arrangement.

(c) *Avoidance of conflict of interest.* The applicant and its staff shall avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the applicant's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients.

(d) *Drug-free workplace.* The applicant provides a drug-free workplace and complies with the requirements of the Drug-Free

Workplace Act of 1988 as implemented by 24 CFR part 24, subpart F.

(e) *Compliance with HUD fee guidelines.* If the applicant intends to charge counseling fees, the applicant shall comply with the fee guidelines of § 214.62.

§ 214.16 Preliminary application.

(a) *Submission.* An applicant meeting the organizational requirements of § 214.12 shall submit a preliminary application on Form HUD-9900A (Preliminary Application for HUD Approval as a Housing Counseling Agency), or on such other form as may be prescribed by the Secretary. The preliminary application must be accompanied by the evidence and certifications required by §§ 214.12-214.14 and all supplementary statements, certifications or other documents required by this subpart B or by the preliminary application form.

(b) *Review by HUD.* Within 30 days from the date of receipt of the preliminary application, HUD will review the preliminary application and notify the applicant whether the preliminary application has been approved or disapproved.

(1) *Approval.* HUD will notify the applicant of the approval of the preliminary application by letter or telephone call.

(2) *Disapproval.* HUD will notify the applicant of the disapproval of the preliminary application by letter which provides specific reasons for the disapproval. The applicant may appeal HUD's disapproval decision by following the appeal procedures of § 214.54.

§ 214.18 Post-filing conference.

Following approval of the preliminary application and before submission of the final application, an applicant must schedule a conference with a HUD Field Office representative. HUD will not process the final application until the required conference has been held. The conference generally will be held at the applicant's office but may be held at a conveniently located HUD office. In the event a HUD Field Office representative is unable to meet personally with the applicant, the conference will be conducted by telephone at HUD's expense. The purpose of the conference is to assist the applicant with preparation of the final application and with preparation for operating as an approved agency.

§ 214.20 Final application.

(a) *Filing deadline.* Within 90 days from the date of the post-filing

conference, the applicant shall submit a final application. Failure of the applicant to submit the final application within 90 days of the post-filing conference will require the applicant to schedule a new post-filing conference. Any expenses incurred for the second conference must be borne by the applicant.

(b) *Form of application.* The applicant shall submit a final application on Form HUD-9900B (Final Application for HUD Approval as a Housing Counseling Agency) or on such other form as may be prescribed by the Secretary. The final application must be accompanied by the following:

(1) *Housing counseling plan.* The applicant shall submit a statement describing in detail the housing counseling services it intends to provide as an approved agency and the resources available for successful delivery of those services.

(2) *Other information.* The final application shall be accompanied by all supplementary statements, certifications or other documents required by this subpart B or by the final application form.

(c) *Review by HUD.* Within 60 days from the date of receipt of the final application, HUD will review the final application and notify the applicant whether the application has been approved or disapproved.

(1) *Approval.* HUD will notify the applicant of approval of the final application by letter. The approval letter will be accompanied by an acceptance form which must be signed, dated and returned by the applicant. HUD will only approve an application that meets all requirements and conditions set forth in this part. No conditional approvals will be granted.

(2) *Disapproval.* HUD will notify the applicant of the disapproval of the final application by a letter which provides specific reasons for the disapproval. Within 45 days of the date of the disapproval decision, an applicant who disagrees with the decision may take further action as follows:

(i) Appeal the disapproval decision by following the appeal procedures of § 214.54;

(ii) Request another post-filing conference; however, any expenses incurred for this conference must be borne by the applicant;

(iii) Submit a revised final application which corrects the deficiencies noted by HUD in the disapproval letter.

§ 214.22 Approval by HUD.

(a) *Certificate of approval.* Upon receipt of the acceptance form referred to in § 214.20(c)(1), HUD will issue to the

applicant a "Certificate of Approval" as a HUD housing counseling agency.

(b) *Period of approval.* The period of approval is effective as of the date of the approval letter and expires 24 months from that date unless approval is withdrawn or terminated before the expiration date, as provided by § 214.52.

Subpart C—Counseling Services and Performance Requirements of Approved Agencies

§ 214.30 Counseling services.

(a) *Basic service requirements.* Each approved agency shall offer the following basic services:

(1) *Screening interview.* Every potential client must be afforded a screening interview. The screening interview allows the approved agency to identify the client's housing need or housing problem and to determine whether assistance can be provided through the agency's counseling services. The screening interview must be a face-to-face interview between the counselor and the client, unless a face-to-face interview would create undue hardship for the client, in which case a telephone interview is acceptable. The screening interview must be conducted by a counselor and must be documented with a record of time, date and participants.

(2) *Counseling plan.* A counselor must prepare a counseling plan for each client which outlines the actions the agency and the client will take to resolve the client's housing need or housing problem. The counselor must obtain the client's consent before implementing the plan.

(3) *Client follow-up.* A counselor must contact a client periodically to ensure that progress is being made in resolving the client's housing need or housing problem, and to determine whether additional counseling sessions or other types of counseling services are required.

(4) *Written termination of counseling.* Each client of the agency must be provided written notice that counseling has been terminated. Termination occurs when:

(i) The client's housing need is met or the client's housing problem is resolved;

(ii) The agency determines that further counseling will not meet the client's housing need or resolve the client's housing problem;

(iii) The client terminates counseling;

(iv) The client fails to comply with the agreed-upon counseling plan; or

(v) The client fails to appear for counseling sessions.

(5) *Required areas of counseling.* As required by § 214.12(g)(2), an approved

agency's counseling staff must have working knowledge of HUD's single family and multifamily housing programs and of housing programs available in the local and community housing market. Counseling and guidance must be provided to the client in these areas. The agency will determine which additional approved areas of housing counseling will be provided in accordance with § 214.30(b).

(b) *Approved areas of counseling.* The following areas are approved areas of housing counseling:

Alternatives to foreclosure;
Assessment of causes of problems;
Displacement and relocation;
Escrow and deposit accounts;
Fair housing laws;
Foreclosure and eviction procedures;
Home equity conversion mortgage insurance program;
Household management;
Housing and assistance for the homeless;
Housing care and maintenance;
Housing selection;
HUD mortgage insurance and assistance programs;
HUD rental and subsidy programs;
Landlord-tenant laws;
Lease and rental agreements;
Money and budget management;
Purchase procedures and financing;
Qualifying for HUD subsidies;
Real estate and mortgage terminology;
Referrals to other sources;
Rights and responsibilities of homeowners and tenants; and

Any other area of housing counseling that is determined to be appropriate by the agency and approved by the Secretary.

(c) *Range of counseling services provided.* An approved agency may offer counseling in all areas listed in § 214.30(b) or may specialize in providing counseling in only certain of the approved areas.

§ 214.32 Performance requirements.

To maintain approval status, an approved agency must meet the following requirements:

(a) *Organizational requirements.* The approved agency must maintain the organizational status and standards required by § 214.12.

(b) *Agency practices.* The approved agency must comply with the practices prescribed in § 214.14.

(c) *Workload.* During each 12-month period of approval, an approved agency must counsel at least 50 clients.

(d) *Staff training and monitoring.* The approved agency must ensure that newly employed counselors receive proper training in the required areas of

housing counseling. The approved agency must also ensure that management periodically monitors the work of counselors by reviewing client files to determine the adequacy and effectiveness of the counseling offered and delivered to clients.

(e) *Grant agreement performance requirements.* Approved agencies which are grantees must also comply with the performance standards set out in the grant agreement. (See § 214.74(a).)

(f) *Other requirements.* Each approved agency must also comply with the notification requirements of § 214.34, the recordkeeping requirements of § 214.36 and the reporting requirements of § 214.38.

§ 214.34 Agency organizational and service changes.

(a) *Notification to HUD.* An approved agency must notify the HUD Field Office, in writing, within 15 days from the date of the occurrence of any of the following events:

(1) Loss of nonprofit status;

(2) Inability to comply with State and local requirements governing housing counseling agencies;

(3) Inability to comply with terms of the grant agreement, in the case of a grantee;

(4) Change in address or telephone number of any of the approved agency's counseling facilities;

(5) Change in any of the counseling staff;

(6) Change in offered counseling services;

(7) Change in the geographical area served by the approved agency;

(8) Change in any other aspect of the approved agency's operation that impairs the agency's ability to comply with the requirements of this part.

(b) *Action by HUD.* Dependent upon the nature of the change in the agency's organizational structure or service delivery, HUD may withdraw approval as provided in § 214.52.

§ 214.36 Recordkeeping.

(a) *Recordkeeping system.* Each approved agency must have an established system of recordkeeping. An approved agency may use any recordkeeping system, provided that the system lends itself to easy retrieval and review of housing counseling data by: the agency's counseling staff; HUD; and the General Accounting Office (GAO).

(b) *Client records.* An approved agency must maintain a separate file for each client.

(1) *Information on file.* Each client file must contain, at a minimum, the following information:

(i) The client's name, address and telephone number; and, for clients with HUD-insured mortgages, or clients participating in HUD housing programs, to the extent feasible, the client's race, ethnicity and gender, in accordance with section 562 of the Housing and Community Development Act of 1987;

(ii) The counselor's name or counselors' names if there is more than one counselor as may be the case when the client is a group of individuals;

(iii) A client identification number (HUD will provide each approved agency with the type of identification system to be used for clients involved in certain HUD housing programs);

(iv) The screening interview report;

(v) A copy of the counseling plan developed by the counselor on behalf of the client;

(vi) A report on each counseling session, each follow-up telephone call or visit, and each termination of counseling; and

(vii) Copies of all correspondence, reports and other documents pertaining to the client and the services provided.

(2) *Maintenance of client files.*

Approved agencies, not operating under a grant agreement, shall maintain client files for a period of three years from the date of written termination of counseling services for a client. Approved agencies, operating under a grant agreement, shall maintain client files for the period specified in the grant agreement, if different from the period specified in this section.

(3) *Confidentiality of client records.*

The approved agency must ensure the confidentiality of each client's personal and financial information, including credit reports, whether the information is received from the client or from another source. Failure to maintain the confidentiality of, or improper use of, credit reports may subject the agency to penalties under the Fair Credit Reporting Act (14 U.S.C. 1681).

(c) *Grantee records.* Grantees shall maintain such additional records as may be required by the grant agreement, and for such periods as required by the grant agreement.

(Approved by the Office of Management and Budget under control number 2502-0261)

§ 214.38 Reporting.

(a) *Performance report.* An approved agency must submit a performance report to HUD once a year during each year of approval. The performance report must be submitted on Form HUD-9902 (which may be obtained from the HUD Field Office), or on such other form as may be prescribed by the Secretary, and must be filed on such date, and at

such place, as specified by the form or by the Secretary.

(b) *Audit.* An approved agency must undergo an independent audit of its financial records every two years. The audit must comply with such provisions as may be prescribed by the Secretary. A copy of the audit report must be submitted to the HUD Field Office within 30 days of the date of the agency's receipt of the audit report.

(c) *Grantee reports.* Grantees must submit a performance report at the expiration of each six month period of the term of the grant, and at the expiration of the term of the grant, regardless of whether six months has passed since the date of submission of the previous performance report. The performance report shall be filed on such form and in such numbers as prescribed by the grant agreement. The report shall be submitted to the Government Technical Monitor no later than the 30th day following the expiration of each six month period of the term of the grant, and following the expiration of the term of the grant. The final invoice to be submitted by the grantee must be accompanied by the final performance report and the grantee's final report on counseling activities as required by the grant agreement.

(Approved by the Office of Management and Budget under control number 2502-0261)

Subpart D—Program Administration

§ 214.40 HUD Field Office assistance and monitoring.

The HUD Field Offices have responsibility for providing assistance to approved agencies within their jurisdiction and for monitoring the agencies' activities.

(a) *Technical assistance.* Upon request, HUD will furnish approved agencies with HUD handbooks covering various HUD housing programs and will provide training to the agency's counseling staff.

(b) *Monitoring.* Day-to-day monitoring of an approved agency's activities will be conducted from the HUD Field Office location by review of data which includes, but is not limited to performance reports; audit reports; notifications of agency changes; correspondence to and from the agency; requests for technical assistance or HUD publications; supplementary materials; client files; client complaints; and HUD-conducted client surveys. If the data reveals any deficiency in the agency's operation, the Field Office will monitor more closely the agency's

activities by an on-site visit, by requiring the agency to submit performance reports on a more frequent basis, or by other means. Any deficiency revealed by the monitoring activities may result in withdrawal of approval as provided in § 214.52.

§ 214.42 Biennial performance review.

(a) *Form of review.* Each approved agency shall be subject to a complete performance review by a representative of the HUD Field Office or HUD Regional Office every two years. The performance review will consist of a review of the agency's compliance with the requirements of this part and the agency's level of success in delivering counseling services. The individual items to be reviewed in each biennial performance review are set forth in Form HUD-9910 (Biennial Performance Review).

(b) *Results of review.* The results of an approved agency's biennial performance review may affect its approval status as discussed (see subpart E of this part) and may be considered in determining funding selection under the grant program described in subpart G of this part.

Subpart E—Reapproval, Withdrawal or Termination of Approval Status, and Appeal Rights

§ 214.50 Reapproval.

Upon expiration of its period of approval, an agency will be reapproved for another two-year period as provided by paragraph (a) of this section; receive conditional reapproval under paragraph (b) of this section; or will have its approval withdrawn in accordance with § 214.52.

(a) *Unconditional reapproval.*

Dependent upon the results of the Field Office's monitoring of an approved agency's operation, as described in § 214.40, or the results of performance review, as described in § 214.42, an agency may be unconditionally reapproved for another two-year period.

(b) *Conditional reapproval.*

An approved agency shall receive a conditional approval if the results of the Field Office's monitoring of the agency's activities or the results of an agency's performance review reveal deficiencies which require correction. HUD will advise the agency in writing of the specific areas that require improvement or correction. A conditional reapproval shall remain in effect for a period of 90 calendar days. On or before the expiration of the 90 days, the conditional approval may be changed to an unconditional approval if the agency demonstrates that it has corrected the

deficiencies noted by HUD. Failure to correct the deficiencies at the end of the 90-day period will result in withdrawal of approval.

§ 214.52 Withdrawal or termination of approval status.

Withdrawal or termination of an agency's approval status will be effective upon written notification of withdrawal of approval by HUD, as provided in paragraph (a) of this section, or upon written notification of termination of approval by the agency, as provided in paragraph (b) of this section. Upon termination or withdrawal, the agency must return to HUD any unexpired certificate of approval. If the approved agency is also a grantee, the withdrawal or termination also terminates further funding under the grant award. A grantee will not receive grant payments from HUD for any counseling activities after the date on which its approval has been withdrawn or terminated.

(a) *Withdrawal of approval.* HUD may withdraw its approval of any agency upon the occurrence of any of the following events:

(1) At the convenience of the federal government;

(2) The approved agency loses its nonprofit status;

(3) The approved agency is unable to comply with the state and local requirements governing housing counseling agencies;

(4) The approved agency, if also a grantee, is unable to comply with the terms of the grant agreement;

(5) The approved agency is found to have engaged in practices prohibited by § 214.14.

(6) The approved agency is unable or unwilling to correct the deficiencies noted in the conditional approval within the time allotted.

(b) *Termination by approved agency.* An approved agency may terminate its relationship with HUD as an approved agency at any time, upon written notification to HUD.

§ 214.54 Appeal rights.

An applicant for approval, or an approved agency seeking reapproval, shall have the right to appeal any adverse decision rendered by HUD under this part.

(a) *Informal appeal.* An applicant or approved agency may make an informal appeal by telephoning the Field Office and speaking with the staff person in charge of the Housing Counseling Program. The applicant or approved agency shall identify the adverse decision and state the reasons for objection to the decision.

(b) *Formal appeal.* An applicant or approved agency may make a formal appeal of an adverse decision by appealing in writing to the Director of Housing Management of the Field Office. If the Field Office upholds the adverse decision, the applicant or approved agency may appeal in writing to the Government Technical Representative. The written appeal shall identify the adverse decision and state the reasons for objection to the decision. The written appeal may include a request for a meeting with a HUD representative.

(c) *Appeal by grantee under grant agreement.* A grantee may appeal an adverse decision, on a program matter under the grant agreement, made by the Government Technical Monitor for Housing Counseling in the HUD Field Office by writing to the Government Technical Representative in the Regional Office. The written appeal shall identify the adverse decision and state the reasons for objection to the decision.

(c) *Timeliness of appeal.* An appeal must be received by the appropriate HUD office within 45 days of the date of the HUD decision being appealed. HUD is not obligated to review appeals received after this 45-day period.

Subpart F—Financial Resources

§ 214.60 Funding sources.

Grants awarded under subpart G of this part represent only partial reimbursement to grantees for costs incurred in the operation of a housing counseling agency. HUD, therefore, recommends that approved agencies seek funding from programs other than the grant program under subpart G of this part.

(a) *Non-federal sources.* Approved agencies should seek funding from private sources and other public sources, including State and local government and community sources. In seeking funding from other sources, an approved agency must avoid any possible conflict of interest. (See § 214.14(c).) As provided in § 214.12(f), HUD reserves the right to approve sources of funding.

(b) *Community Development Block Grants.* Approved agencies may be eligible to receive monies under the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974. Agencies are encouraged to contact their local HUD Field Office for information about grants available under this program.

§ 214.62 Counseling fees.

(a) *Restricted fees.* An approved agency may not charge counseling fees to clients participating in HUD housing programs as homeowners or tenants.

(b) *Approved fees.* Approved agencies may charge counseling fees to all other clients subject to the following requirements:

(1) No counseling fee will be charged to a client who cannot afford the fee;

(2) Counseling fees must be nominal and comparable to fees charged by similar agencies for similar services;

(3) Counseling fees must be established using a sliding scale formula, i.e., based on a client's income;

(4) No fee will be charged to a client whom the approved agency counsels as a requirement under a HUD grant.

Subpart G—Grant Program**§ 214.70 Grant assistance under section 106.**

Section 106 authorizes two types of grant assistance: grant assistance under section 106(a) and grant assistance under section 106(c).

(a) Section 106(a) assistance.

Approved housing counseling agencies shall use section 106(a) assistance to provide the counseling services to tenants, clients interested in homeownership, including clients interested in the home loans specified in paragraphs (a) (1) through (3) of this section, and:

(1) Homeowners with HUD-insured loans;

(2) First-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (i.e., home loans guaranteed by the Farmers Home Administration); and

(3) Homeowners with loans guaranteed or insured under Chapter 37 of title 38, United States Code (i.e., home loans insured or guaranteed by the Department of Veterans Affairs).

(b) Section 106(c) assistance.

Approved housing counseling agencies shall use section 106(c) assistance only to counsel "eligible homeowners" (as this term is defined in § 214.82).

§ 214.72 Grants: notification, application and selection process.

(a) *Notice of fund availability.* When funds are made available by the Congress for assistance to approved agencies, HUD, in accordance with the regulations at 24 CFR part 12, will publish a notice of fund availability (NOFA) in the **Federal Register** and invite all approved agencies to apply for grants. The NOFA will:

(1) Explain how application packages may be obtained, and describe specific application requirements;

(2) Specify the place for filing completed applications, and the date by which the applications must be received at that location;

(3) State the amount of funding available under the NOFA;

(4) Describe generally the procedures by which grants are awarded and the terms of the grant;

(5) Provide other appropriate program information and guidance, as may be required by the regulations at 24 CFR part 12.

(b) *Regional allocation.* HUD allocates available funds to each HUD Region for implementing the Housing Counseling Program. The amount of funds allocated to each HUD Region for a given fiscal year will be stated in the NOFA. Approved agencies applying for grants are selected within a Region on a competitive basis generally described in this subpart G and more specifically described in the NOFA.

(c) *Application.* The agency applicants must submit applications for grants made available under this subpart in the form and within the time periods established by HUD as set forth in the NOFA. At a minimum, HUD will require the applications to include all pertinent information about the applicant agency including date of approval, performance reviews, and geographical areas where housing counseling is performed.

(d) *Selection process.* Applications will be reviewed and evaluated on the basis of the criteria set forth in § 214.72(c) and on the basis any additional criteria set forth in the NOFA. Grants will be awarded to applicants within each Regional area. Grants are awarded for a 12-month period. HUD will notify, in writing, each applicant agency concerning whether the agency's application has been selected for a grant award. HUD also will comply with all publication, notification and disclosure requirements set forth in 24 CFR part 12.

(e) *Use of grant funds.* The use of funds awarded under this grant program is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients,

and subrecipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The regulation also requires disclosures from applicants, and subrecipients if nonappropriated funds have been spent or committed for lobbying activities.

§ 214.74 Grant program.

(a) *Grant agreement.* Each successful applicant will enter into a grant agreement with HUD. The grant agreement establishes certain additional terms and conditions to which the approved agency must adhere to receive funding from HUD. These terms include additional reporting and recordkeeping requirements. The grant agreement also establishes the procedure by which a grantee receives payment under the grant. Each grantee is paid on the basis of a monthly invoice submitted to HUD by the grantee. The grant agreement sets forth the information to be included in each invoice.

(b) *Administration.* The grant program is administered by the Government Technical Representative who is assisted by the Government Technical Monitor.

(c) *Grant agreement controlling.* The grant agreement shall be controlling in any case of conflict between the terms of the grant agreement and of this part 214.

Subpart H—Responsibilities of Creditors**§ 214.80 Purpose and applicability.**

(a) *Purpose.* This subpart implements section 106(c)(5) that requires lenders to inform delinquent mortgagors about the availability of the creditor's counseling services and of HUD's Housing Counseling Program.

(b) *Applicability.* The section 106(c) (notification requirement applies to all home loans, including conventional mortgages and home loans and those insured by HUD, except for those loans assisted by the Farmers Home Administration under title V of the Housing Act of 1989, and those loans insured or guaranteed by the Department of Veterans Affairs under chapter 37 of title 38, United States Code.

§ 214.82 Definitions.

In addition to the terms defined in § 214.5, the following terms used in this subpart H shall have the meaning indicated:

Delinquent means a mortgage account where a payment is due and not paid.

Eligible homeowner means a homeowner with a home loan secured by property that is the principal residence of the homeowner; and the home loan is not assisted under title V of the Housing Act of 1949 (Rural Housing); and the homeowner is expected to be unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments, because of an involuntary loss of, or reduction in the employment of the homeowner, the self-employment of the homeowner, or in the income of the homeowner, or of any similar loss or reduction experienced by any person who contributes to the income of the homeowner. For purposes of a creditor's duty of notification, "eligible homeowner" does not include a homeowner whose loan is insured or guaranteed under Chapter 37 of title 38, United States Code, or a homeowner who pays the amount overdue before the expiration of the 45-day period.

Home loan has the same meaning as in § 214.5.

Homeownership counseling means informing, advising, and assisting homeowners on those areas of housing counseling that are specifically directed to the rights and responsibilities of homeowners.

Mortgage means a first lien upon real property as is commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the jurisdiction where the real property is situated together with the credit instruments, if any, secured by the first lien.

Mortgagee means the lender under a mortgage.

Mortgagor means the borrower under a mortgage.

Principal residence means the dwelling where the mortgagor maintains his or her permanent residence, and spends the majority of his or her time at this resident during the calendar year. The only exception to the "principal residence" requirement applies to a

member of the armed forces who, because of active duty, cannot occupy the property but intends, at the end of active duty, to occupy the property as the principal residence.

Residential property means a one-family residence, including a one-family unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

Section 106(c)(5) means section 106(c)(5) of the Housing and Urban Development Act of 1968, which was created by section 169 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), as amended by section 577 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1990.)

§ 214.84 Housing counseling; notification by creditors.

(a) *Duty of notification.* A creditor must notify an eligible homeowner of the availability of homeownership counseling whenever the mortgage of an eligible homeowner is delinquent. Delinquent mortgage includes delinquent mortgages, home equity loans, deeds of trust, second liens and any other loan secured by the mortgagor's principal residence.

(b) *Form of notification.* The notice of availability of homeownership counseling must contain information on any counseling provided by the creditor and either the name, address and telephone number of the HUD-approved agencies located near the homeowner, or, subject to the availability of appropriations and as more fully described in paragraph (d) of this section, the toll-free telephone number operated by HUD through which any eligible homeowner can obtain a list of HUD-approved housing counseling agencies.

Section 106(c)(5) does not require that notice of the availability of counseling

assistance be made by certified mail. However, a creditor should be in a position to prove delivery of notification, in the event a homeowner alleges noncompliance with section 106(c)(5).

(c) *Timing of notification.* Notification of the availability of homeownership counseling must be made to the eligible homeowner within 45 days from the date that homeowner's mortgage account became delinquent.

(d) *Listing of HUD-approved agencies and monitoring of creditor's notification.* Subject to the availability of appropriations, HUD will contract with a private entity under which the entity will:

(1) Operate a toll-free telephone number through which any eligible homeowner can obtain a list of HUD-approved agencies experienced in the provision of homeownership counseling, and located within the area in which the homeowner's residential property is located;

(2) Monitor the compliance of creditors with the notification requirements of section 106(c)(5); and

(3) Report to HUD, not less than annually, regarding the extent of compliance of creditors with the notification requirements of section 106(c)(5).

§ 214.86 Creditor homeownership counseling.

Section 106(c)(5) does not require that any creditor provide homeownership counseling. Creditors that offer their own homeownership counseling are not required to be approved by HUD under subpart B of this part. Creditors that offer their own homeownership counseling are not exempt from the notification requirements of § 214.84.

Dated: September 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-27556 Filed 11-14-91; 8:45 am]

BILLING CODE 4210-27-M

Friday
November 15, 1991

CONTINUATION
OF
EMERGENCY
REGARDING
EXPORT CONTROL

CONTINUATION
OF
EMERGENCY
REGARDING
EXPORT CONTROL

Part VI

The President

**Notice of November 14, 1991—
Continuation of Emergency Regarding
Export Control Regulations**

Library
Movember 12, 1981

Part VI

The President

Notice to Movember M. 1981—
Consultation to Enclosed
Ebook Computer Holdings

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

Presidential Documents

Title 3—

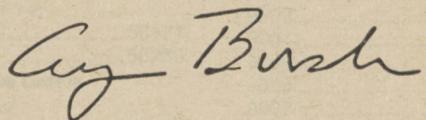
Notice of November 14, 1991

The President

Continuation of Emergency Regarding Export Control Regulations

On November 16, 1990, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), I issued Executive Order No. 12735. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the proliferation of chemical and biological weapons. Because the proliferation of these weapons continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 16, 1990, must continue in effect beyond November 16, 1991. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order No. 12735.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 14, 1991.

[FR Doc. 91-27779

Filed 11-14-91; 11:54 am]

Billing code 3195-01-M

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection desk
Corrections to published documents
Document drafting information
Machine readable documents

202-523-5227
523-5215
523-5237
523-5237
523-3447

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

523-5227
523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

523-6641
523-5230

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

523-5230
523-5230
523-5230

The United States Government Manual

General information

523-5230

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

523-3447
523-3187
523-4534
523-3187
523-6641
523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

56145-56288.....	1
56289-56460.....	4
56461-56566.....	5
56567-56918.....	6
56919-57230.....	7
57231-57480.....	8
57481-57572.....	12
57573-57792.....	13
57793-57968.....	14
57969-58172....	15

Federal Register

Vol. 56, No. 221

Friday, November 15, 1991

CFR PARTS AFFECTED DURING NOVEMBER

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.

1413.....56335
1955.....56474

3 CFR

Proclamations:

6368.....56145
6369.....56919
6370.....57793
6371.....57795
6372.....57797
6373.....57967
6374.....57969

Executive Orders:

May 28, 1912
(Revoked by
PLO 6906).....57806
November 8, 1912
(Revoked by
PLO 6905).....57805
May 31, 1915
(Revoked by
PLO 6908).....57806
12735 (Continued
by Notice of
November 14,
1991).....58171
12780.....56289

Administrative Orders

Memorandums:
October 21, 1991.....56147
Presidential Determinations:
No. 92-4 of
October 24, 1991.....56567
Notices:
November 14, 1991.....57969

5 CFR

Proposed Rules:

531.....56276
550.....56276
575.....56276
771.....56276

7 CFR

301.....57573, 57579
434.....56569
435.....56569
441.....57231
445.....57971971
446.....57971
447.....56569
451.....56569
802.....56293
907.....57231
908.....57231
1600.....56275
1610.....56461
3200.....57950
3400.....58146

Proposed Rules:

Ch. IV.....56605
401.....57296
1139.....57298

9 CFR

Proposed Rules:

1.....57991
2.....57991

10 CFR

171.....57587, 57590
Proposed Rules:
Ch. I.....57603
600.....56944

11 CFR

100.....56570
102.....56570
106.....56570, 57864
110.....56570
113.....56570
116.....56570
9001.....56570
9002.....56570
9003.....56570
19004.....56570
9005.....56570
9006.....56570
9007.....56570
9012.....56570
9031.....56570
9032.....56570
9033.....56570
9034.....56570
9035.....56570
9036.....56570

9037.....56570
9038.....56570
9039.....56570

12 CFR

709.....56921
922.....56691
931.....56691
932.....56691, 56929
1410.....57232
1510.....57481
Proposed Rules:
208.....56949
225.....56949

13 CFR

108.....57588
120.....57588

14 CFR

39.....56149-56153, 56462,
56929, 57233-57236, 57373,
57483-57485, 57588, 57590
43.....57570
61.....56571
71.....56463, 56464, 56931,
57486, 57799, 57971, 57973

75.....	57973	26 CFR	177.....	56180	44 CFR	
97.....	56464, 56571	1.....	58003	56180	Proposed Rules:	
1204.....	57591	52.....	56303	56180	83.....	58019
Proposed Rules:		602.....	56303	56180	45 CFR	
Ch. I.....	56174	Proposed Rules:	178.....	56180	Proposed Rules:	
21.....	56605	1.....	56545, 56609, 57374,	57198	Ch. XXV.....	57404
25.....	56605		57605, 58003	56456		
39.....	56174-56177, 57994,	301.....	56545	56911		
	58002	28 CFR	179.....	56180		
71.....	56480, 56481, 56607,	20.....	56578	57778		
	56951, 56952, 57866, 57867	21.....	56578			
75.....	56608	29 CFR	228.....	56155		
255.....	57603	Proposed Rules:	307.....	56157		
15 CFR		1910.....	57036	36 CFR		
400.....	56544	1915.....	57036	3.....	57985	
Proposed Rules:		1926.....	57036	4.....	57985	
925.....	57868	2617.....	58014	8.....	57492	
1150.....	56953, 57869	30 CFR	111.....	57724		
17 CFR		202.....	57256	265.....	56933, 57805, 57984	
210.....	57237	206.....	57256	Proposed Rules:		
229.....	57237	210.....	57256	3001.....	56955	
230.....	56294	212.....	57256			
239.....	56294, 57237	915.....	56578			
240.....	57237	Proposed Rules:	795.....	57376		
270.....	56154, 56294	870.....	57376	51.....	57288	
274.....	56294	872.....	57376	52.....	56158, 56159, 56467,	
Proposed Rules:		873.....	57376	57492		
180.....	56482	874.....	57376	62.....	56320	
240.....	57605	875.....	57376	80.....	57986	
249.....	57605	876.....	57376	81.....	56694	
18 CFR		886.....	57376	122.....	56548	
2.....	56544, 57255	916.....	58018	271.....	57593	
154.....	56544, 57255	31 CFR	721.....	56470		
157.....	56544, 57255	211.....	56931	Proposed Rules:		
271.....	56466	32 CFR	52.....	56485		
284.....	56544, 57255	275.....	57984	122.....	56555	
375.....	56544, 57255	290.....	56932	704.....	57144	
380.....	56544, 57255	292a.....	56595, 57799	799.....	57144	
19 CFR		294.....	57984			
101.....	57487	310.....	57800	41 CFR		
Proposed Rules:		311.....	57801	101-47.....	56935	
101.....	56179	313.....	57801	302-4.....	57289	
141.....	56608	314.....	57801	303-1.....	57289	
142.....	56608	315.....	57801	303-2.....	57289	
20 CFR		317.....	57802			
404.....	57928	318.....	57802	42 CFR		
416.....	57928	319.....	56595	62.....	56596	
655.....	56860	321.....	57802	Proposed Rules:		
23 CFR		322.....	57802	36.....	56691	
140.....	56576	323.....	57803	400.....	56612	
1327.....	57255, 57373	719.....	57803	420.....	56612	
Proposed Rules:		1286.....	57803	421.....	56612	
1212.....	56692	Proposed Rules:	199.....	57498		
24 CFR		117.....	57287, 57490			
Ch. I.....	56544	Proposed Rules:	6884.....	56275		
86.....	57488	95.....	56180			
570.....	56902	100.....	56180			
813.....	57489	117.....	56609, 56610			
913.....	57489	157.....	56284			
Proposed Rules:		173.....	56180			
10.....	57869	174.....	56180			
17.....	56336	175.....	56180			
214.....	58158	43 CFR	6849 (Corrected by			
961.....	57871		PLO 6907.....	57806		
25 CFR		6890.....	58122			
Ch. III.....	57373	6901.....	56321			
Proposed Rules:		6902.....	56322			
502.....	56278, 56282, 57373	6903.....	56936			
		6904.....	56936			
		6905.....	57805			
		6906.....	57806			
		6907.....	57806			
		6908.....	57806			
		6909.....	57807			
				44 CFR		
				Proposed Rules:		
				83.....	58019	
				45 CFR		
				Proposed Rules:		
				Ch. XXV.....	57404	
				46 CFR		
				583.....	56322	
				Proposed Rules:		
				25.....	56180	
				31.....	56284	
				32.....	56284	
				35.....	56284	
				382.....	57807	
				552.....	57298	
				586.....	56487	
				47 CFR		
				Ch. I.....	56937	
				1.....	56599, 57596, 57808	
				2.....	57808	
				13.....	56599	
				15.....	57823	
				21.....	57596, 57806	
				64.....	56160	
				68.....	56160, 57823	
				73.....	56166-56169, 56472,	
					56473, 56602, 56938, 56939,	
					57290-57294	
				74.....	56169, 57596, 57808	
				78.....	57596	
				80.....	57495, 57987	
				94.....	57808	
				97.....	56171	
				Proposed Rules:		
				Ch. I.....	57300	
				2.....	56611	
				69.....	57301	
				73.....	56181, 56182, 56489,	
					56490, 57302, 57606, 57608,	
					57871	
				80.....	56955, 57501	
				90.....	56611	
				48 CFR		
				352.....	57602	
				950.....	57824	
				952.....	57824	
				970.....	57824	
				1631.....	57496	
				1652.....	57496	
				1801.....	56691	
				1815.....	56691	
				1852.....	56691	
				Proposed Rules:		
				15.....	57182	
				515.....	56956	
				538.....	56956	
				935.....	56621	
				49 CFR		
				171.....	57560	
				173.....	57560	
				571.....	56323, 56940	
				572.....	57830	
				575.....	57988	
				821.....	56172	
				Proposed Rules:		
				107.....	56962	
				171.....	56962	
				533.....	58020	
				541.....	56339	

552.....	56343
582.....	56963
1063.....	56490

50 CFR

16.....	56942
17.....	56325, 57844
216.....	56603
247.....	56603
285.....	56544
301.....	57294
611.....	56603
663.....	56603
672.....	56943, 57989

Proposed Rules:

12.....	57872
13.....	57872
14.....	57502, 57872
17.....	56344, 56491, 56882, 57503, 58020, 58026
20.....	57872
21.....	57872
646.....	57302
672.....	56355, 56623
675.....	56355, 56623
681.....	58029

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 1046/Pub. L. 102-152

Veterans' Compensation Rate Amendments of 1991. (Nov. 12, 1991; 105 Stat. 985; 4 pages) Price: \$1.00

H.J. Res. 280/Pub. L. 102-153

To designate the week beginning November 10, 1991, as "Hire a Veteran Week". (Nov. 12, 1991; 105 Stat. 989; 1 page) Price: \$1.00

Last List November 12, 1991

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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