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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

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC96

Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the Sugar Price Support Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 206 of The Agricultural Act of 1949 (the 1949 Act), as amended. The national (weighted-average) loan rate for 1992-crop raw cane sugar will be 18.00 cents per pound. The national (weighted-average) loan rate for 1992-crop refined beet sugar will be 23.33 cents per pound.

DATES: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Sweeteners Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone 202-690-1891.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and it has been determined to be "major" since this action may have an annual effect on the economy of $100 million or more. A regulatory impact analysis is available from the above-mentioned contact.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases—10.051.

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

An Environmental Evaluation with respect to the price-support loan program has been completed. It has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

The amendments to 7 CFR part 1435 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule: Preempt state laws to the extent such laws are consistent with the provisions of this final rule; are not retroactive; and are not subject to administrative appeal remedies.

Background

This final rule amends 7 CFR part 1435 to set forth the 1992 national price support levels for use in administering CCC sugar price support programs.

Section 206 of the 1949 Act provides that the Secretary of Agriculture is required to support the price of the 1991 through 1995 crops of sugar beets and sugarcane through nonrecourse loans. Section 206 further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18.00 cents per pound, raw value, and the price of domestically grown sugar beets at such level as will reflect the ratio of sugar beet grower returns to the returns of sugarcane growers.

List of Subjects in 7 CFR Part 1435

Loan programs-agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended as follows:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. In § 1435.4, paragraph (b) is revised to read as follows:

§ 1435.4 Method of support and loan rates.

* * * * *

(b) The basic (weighted average) loan rates for the 1992 crops of domestically grown:

(1) Sugarcane shall be 18 cents per pound of raw cane sugar; and

(2) Sugar beets shall be 23.33 cents per pound.

* * * * *

Signed July 23, 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-17847 Filed 7-28-92; 8:45 am]
BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1369-92]

Adding Orlando, Florida to the List of Ports of Entry To Accept Application for Direct Transit Without Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Orlando, Florida, to the list of ports of entry at 8 CFR 214.2(c)(1) where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States as a direct transit without visa. This change is necessary to accommodate the

increase in international commerce serving Orlando, Florida.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Gottlieb, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–2680.

SUPPLEMENTARY INFORMATION: This final rule adds Orlando, Florida, to the list of ports designated at 8 CFR 214.2(c)(1) as ports where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Orlando International Airport in Orlando, Florida, has added international passenger service, specifically arrivals transiting between Western Europe and Central and South America. In the context of the increase in international activity at Orlando, the airport authority wants to ensure that they can accommodate these commercial air passengers.

Compliance with the provisions of 5 U.S.C. 553 for notice of proposed rulemaking and delayed effective date is unnecessary, because this rule relates to agency management. See 5 U.S.C. 553(a)(2).

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

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and visas, Ports of entry, Travel restrictions.

Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR part 2.

§ 214.2 [Amended]

2. As designated in § 214.2 paragraph (c)(1), the listing of ports of entry authorized to accept transit without visa applications is amended by adding "Orlando, FL," in alphabetical sequence immediately after "Norfolk, VA."

Dated: June 23, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–17849 Filed 7–28–92; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 72, 73, and 75

RIN 3150–AD03

Minor Amendments to the Physical Protection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that cover the physical protection of special nuclear material. These amendments will (1) supplement the definitions section, (2) delete action dates that no longer apply, (3) correct outdated terms and cross references, (4) clarify wording that is susceptible to differing interpretations, (5) correct typographical errors, and (6) make other minor changes. The amendments are the result of a systematic review of NRC's safeguards regulations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stanley P. Turel, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3739; Priscilla Dwyer, Domestic Safeguards Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2478; or Donald M. Carlson, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–3212.

SUPPLEMENTARY INFORMATION: The NRC Safeguards Interoffice Review Group has conducted a systematic review of the Agency's safeguards regulations and guidance documents to identify areas in the regulations that are out of date, inconsistent, or susceptible to differing interpretations. In doing so, the review group identified other areas in the regulations where minor changes are warranted. The NRC published in the **Federal Register** on August 15, 1989 (54 FR 33570), proposed amendments consisting of minor corrections and changes to its regulations identified by the review group that cover the physical protection of special nuclear material. The comment period ended on September 29, 1989. The changes are summarized here with a brief discussion.

1. The substance of paragraphs (b), (c), and (d) of 10 CFR 73.40 has been moved to appendix C of 10 CFR part 73 and combined with the safeguards contingency plan specifications already there. The requirement for having a safeguards contingency plan is included in each of the sections of the regulations covering security requirements for the specific class of licensee (i.e., §§ 73.20, 73.25, 73.26, 73.40, 73.46, 73.55, 73.60).

2. To avoid possible confusion, definitions of the commonly used terms Category I, Category II, and Category III have been added to the definitions sections of 10 CFR parts 70 and 73.

A formula quantity of strategic special nuclear material is sometimes referred to as a Category I quantity of material; special nuclear material of moderate strategic significance is sometimes referred to as a Category II quantity of material; and special nuclear material of low strategic significance is sometimes referred to as a Category III quantity of material. The current regulations do not include these category designations, although they are sometimes used.

3. Inconsistencies among the general auditing requirements have been removed for the safeguards contingency plans and physical security programs of transportation and fuel cycle licensees who possess Category I material.

Inconsistencies in both the content of the audits and resultant follow-up actions have been eliminated. The record retention period for results of these audits is being made consistent at 3 years.

4. A definition for the term "contiguous sites" has been added to 10 CFR parts 70 and 73. In the final definition, the words "* * * means locations subject to the control of a licensee, * * *" have been grammatically changed to read "* * * means licensee controlled locations, * * *" In addition, the words "* * * and for the possession, use, or storage of special nuclear material * * *" have been deleted from the definition since they generally appear in the introductory language of applicable regulations. Action dates that have passed have been eliminated. The outdated term "industrial sabotage" has been replaced by the current term "radiological sabotage." Incorrect

references to parts of the regulations that have been moved or deleted have been corrected. Paragraph designations in references, in other parts of the regulations, to definitions in § 70.4 have been removed because those designations were deleted in an amendment published in the **Federal Register** on April 28, 1989 (54 FR 14051). Several areas in the regulations have been clarified where the wording was susceptible to differing interpretations. The notification requirement for changes to the safeguards contingency plan that do not decrease the plan's effectiveness has been revised to require that the original be sent to the NRC headquarters office with a copy to the regional office, instead of vice versa. Finally, several typographical errors have been corrected.

Summary of Public Comments

Three letters of comment were received: Two from nuclear power plant licensees and one from NUMARC, an umbrella organization of the nuclear power industry whose membership includes every utility responsible for constructing or operating a commercial nuclear power plant in the United States. Copies of comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

All three commenters addressed only the amendment that would restore the sentence inadvertently omitted, while amending the physical protection requirements in 1986, from § 73.55(d), Access Requirements. It reads:

"Access to vital areas for the purpose of general familiarization and other nonwork-related activities may not be authorized except for good cause shown to the licensee." This sentence follows the requirement in § 73.55(d)(7)(i) that the licensee "Establish an access authorization system to limit unescorted access to vital areas during non-emergency conditions to individuals who require access in order to perform their duties."

The first commenter stated that the restrictions, presumably made explicit by the inserted sentence, should be withdrawn to allow tours with the provision of appropriate security measures to ensure plant safety and that "This change would limit access to nuclear plant vital areas even when under escort." Another commenter asserted that the inserted sentence "needs clarification" but did not specify what additional clarification was required. The third commenter stated that it would be beneficial if a definition of "good cause" were provided by the Commission in the rule and if additional guidance were provided as to what constitutes nonwork-related activities.

The NRC agrees that the subject sentence is not clear, particularly with respect to how it applies to escorted persons, and has decided not to reinsert the sentence. As stated in item 5 of the Supplementary Information published with the proposed rule, the NRC was concerned that the inadvertent omission of the sentence would be construed as a " 'signal' that vital areas could be 'opened up' to 'public sightseeing tours' or 'open house visits' without close licensee oversight." The NRC continues to be concerned about unnecessary escorted personnel traffic in vital areas, especially the control room, but considers that licensee security plans generally provide an adequate basis for the control of such practice. The NRC concludes that licensee security plans, in implementing 10 CFR 73.55(d)(7), would not permit licensees to grant access to persons, either unescorted or escorted, who have no legitimate purpose for such access. Further, prior to granting escorted access, licensees would consider the number of visitors each escort would be allowed to monitor and other controls. Means of achieving the purpose of the visit without entering vital areas also would be considered (e.g., touring the control room simulator rather than the control room). Examples of legitimate small tours, which might include brief access to vital areas, are visits by government officials, the press, or local science teachers. In summary, visitors should not be permitted access to vital areas at operating sites unless there is a good reason and due consideration is given to plant and personnel safety and radiological concerns.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved under the Office of Management and Budget approval number 3150–0009 for part 70, approval number 3150–0132 for part 72, approval number 3150–0002 for part 73, and approval number 3150–0055 for part 75.

Regulatory Analysis

These minor amendments impose no new restrictions or requirements, and therefore, have no significant impact. Accordingly, a regulatory analysis is considered not necessary and has not been prepared.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments, as promulgated, are very minor in nature and the impact on any licensee is minimal. In the matter of reporting certain changes to the security program, the amendments merely reverse who receives the original and who receives the copy. The other changes are of an administrative nature and, therefore, do not alter the current implementation of the regulations by a licensee.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis is not required for this final rule.

List of Subjects

10 CFR Part 70

Criminal penalties, Hazardous materials—Transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials—Transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 70, 72, 73, and 75.[1]

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i) and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.4 is amended by adding a definition for "Contiguous sites" in proper alphabetical sequence, revising paragraph (2) of the definition "Plutonium processing and fuel fabrication plant," revising definitions "Formula quantity," "Special nuclear material of low strategic significance," and "Special nuclear material of moderate strategic significance" to read as follows:

§ 70.4 Definitions.

* * * * *

Contiguous sites means licensee controlled locations, deemed by the Commission to be in close enough proximity to each other, that the special nuclear material must be considered in the aggregate for the purpose of physical protection.

* * * * *

Formula quantity means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

* * * * *

Plutonium processing and fuel fabrication plant * * *

(2) Research and development activities involving any of the operations described in paragraph (1) of this definition except for research and development activities utilizing unsubstantial amounts of plutonium.

* * * * *

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance as defined in paragraph (1) of the definition of strategic nuclear material of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233); or

(2) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope); or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category III quantity of material.

* * * * *

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams contained U-235) + 2 (grams U-233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category II quantity of material.

* * * * *

3. In § 70.19, paragraph (a)(2) is revised to read as follows:

§ 70.19 General license for calibration or reference sources.

(a) * * *

(2) Any Government agency as defined in § 70.4 that holds a specific license issued by the Commission that authorizes it to receive, possess, use, or transfer byproduct material, source material, or special nuclear material; and

* * * * *

4. In § 70.22, paragraphs (h)(1) and (k) are revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(h)(1) Each application for a license to possess or use at any site or contiguous sites subject to licensee control, a formula quantity of strategic special nuclear material as defined in § 70.4, other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter, must include a physical security plan consisting of two parts. Part I must address vital equipment, vital areas, and isolation zones, and must demonstrate how the applicant plans to meet the requirements of §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.60, 73.70, and 73.71 of this chapter in the conduct of the activity to be licensed, including the identification and description of jobs as required by 10 CFR 11.11(a). Part II must list tests, inspections, and other means to demonstrate compliance with such requirements.

* * * * *

(k) Each application for a license to possess or use at any site or contiguous sites subject to licensee control, special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance as defined under § 70.4, other than a license for possession or use of this material in the operation of a nuclear power reactor licensed pursuant to part 50 of this chapter, must include a physical security plan that demonstrates how the applicant plans to meet the requirements of paragraphs (d), (e), (f), and (g) of § 73.67 of this chapter, as appropriate. The licensee shall retain a copy of this physical security plan as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material under each license, and if any portion of

the plan is superseded, retain that superseded portion of the plan for 3 years after the effective date of the change.

5. In § 70.32, paragraph (g) is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to part 73 of this chapter for bringing about the actions and decisions contained in the Responsibility Matrix of its safeguards contingency plan. The licensee shall retain the current safeguards contingency plan procedures as a record for the entire period during which the licensee possesses the appropriate type and quantity of special nuclear material under each license for which the procedures were developed and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of the change. The licensee shall not make a change that would decrease the safeguards effectiveness of the first four categories of information (i.e., Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 72.184, 73.20(c), 73.26(e)(1), 73.46(h)(1), or 73.50(g)(1) of this chapter without the prior approval of the NRC. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior NRC approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee must maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded portion for 3 years after the effective date of the change and shall furnish a report containing a description of each change within 60 days after the change is made to the Director of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate NRC Regional Office as specified in appendix A to part 73 of this chapter.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

6. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186, are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44, (a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b) (3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 72.184, paragraph (a) is revised to read as follows:

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for responding to threats and radiological sabotage must be as defined in appendix C to part 73 of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under part 50 of this chapter. (The fifth and last category of information, Procedures, does not have to be submitted for approval.)

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

8. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201 as amended 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 73.2 is amended by adding a definition for "Contiguous sites" in proper alphabetical sequence, and revising the definitions of "Formula quantity," "Special nuclear material of moderate strategic significance," and "Special nuclear material of low strategic significance" to read as follows:

§ 73.2 Definitions.

* * * * *

Contiguous sites means licensee controlled locations, deemed by the Commission to be in close enough proximity to each other, that the special nuclear material must be considered in

the aggregate for the purpose of physical protection.

* * * * *

Formula quantity means strategic special nuclear material in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

* * * * *

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance as defined in paragraph (1) of the definition of strategic nuclear material of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233); or

(2) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope); or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category III quantity of material.

* * * * *

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams contained U-235) + 2 (grams U-233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category II quantity of material.

* * * * *

10. In § 73.20, paragraph (b)(3) is redesignated as paragraph (b)(4), a new paragraph (b)(3) is added, and paragraphs (b)(2) and (c) are revised to read as follows:

§ 73.20 General performance objective and requirements.

* * * * *

(b) * * *

(2) Is designed with sufficient redundancy and diversity to ensure maintenance of the capabilities described in §§ 73.25 and 73.45;

(3) Includes a safeguards contingency capability that can meet the criteria in appendix C to this part "Licensee Safeguards Contingency Plans;" and

* * * * *

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall establish, maintain, and follow NRC-approved safeguards physical protection and safeguards contingency plans that describe how the licensee will comply with the requirements of paragraphs (a) and (b) of this section.

11. In § 73.26, paragraph (h)(6) is revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

* * * * *

(h) *Test and Maintenance Programs.*

* * *

(6) The transportation security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of transportation security procedures and practices, an evaluation of the effectiveness of the transportation physical protection system, an audit of the transportation physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the review, management's findings on whether the transportation security program is currently effective, and any actions taken as a result of recommendations from prior reviews, must be documented in a report to the responsible organization management and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection for a period of 3 years.

* * * * *

§ 73.40 [Amended]

12. In § 73.40, paragraphs (b), including footnote 1, (c), and (d) and the designation (a) are removed.

13. In § 73.46, paragraphs (g)(6) and (h)(1) are revised to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(g) *Test and Maintenance Programs.*

* * *

(6) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, and any actions taken, must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operations. These reports must be maintained in an auditable form, available for inspection for a period of 3 years.

(h) *Contingency and response plans and procedures.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans must include, but not limited to, the response requirements listed in paragraphs (h)(2) through (h)(5) of this section. The licensee shall retain the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of change.

* * * * *

14. In § 73.50, paragraphs (g)(1) and (h) are revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(g) *Response requirement.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the special nuclear material

and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans." The licensee shall retain the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded portion for 3 years after the effective date of the change.

* * * * *

(h) Each licensee shall establish, maintain, and follow an NRC-approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of paragraph (a)(4) of this section.

15. In § 73.55, paragraphs (b)(4)(ii), (g)(4), and (h)(1) are revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) * * *

(4) * * *

(ii) Each licensee shall establish, maintain, and follow an NRC-approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of this paragraph. The licensee shall maintain the current training and qualifications plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of the change. The training and qualifications plan must include a schedule to show how all security personnel will be qualified 2 years after the submitted plan is approved. The training and qualifications plan must be followed by the licensee 60 days after the submitted plan is approved by the NRC.

* * * * *

(g) * * *

(4) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, management's findings on whether the security program is currently effective, and any actions taken as a result of recommendations from prior program reviews must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection, for a period of 3 years.

(h) *Response requirement.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans."

* * * * *

16. In § 73.60, the introductory text and paragraph (e) are revised to read as follows:

§ 73.60 Additional requirements for the physical protection of special nuclear material at nonpower reactors.

Each nonpower reactor licensee who, pursuant to the requirements of part 70 of this chapter, possesses at any site or contiguous sites subject to control by the licensee uranium–235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), uranium–233, or plutonium, alone or in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium), shall protect the special nuclear material from theft or diversion pursuant to the requirements of paragraphs 73.67 (a), (b), (c), and (d), in addition to this section, except that a licensee is exempt from the requirements of paragraphs (a), (b), (c), (d), and (e) of this section to the extent that it possesses or uses special nuclear material that is not readily separable from other radioactive material and that has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

* * * * *

(e) *Response requirement.* Each licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans."

* * * * *

17. In § 73.67, the introductory text of paragraphs (c), (d), and (f) and paragraph (c)(2) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) Each licensee who possesses, uses, transports, or delivers to a carrier for transport special nuclear material of moderate strategic significance, or 10 kg or more of special nuclear material of low strategic significance shall:

* * * * *

(2) Within 30 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, or when specified by the NRC in writing, implement the approved security plan.

(d) *Fixed site requirements for special nuclear material of moderate strategic significance.* Each licensee who possesses, stores, or uses quantities and types of special nuclear material of moderate strategic significance at a fixed site or contiguous sites, except as allowed by paragraph (b)(2) of this section and except those who are licensed to operate a nuclear power reactor pursuant to part 50, shall:

* * * * *

(f) *Fixed site requirements for special nuclear material of low strategic significance.* Each licensee who possesses, stores, or uses special nuclear material of low strategic significance at a fixed site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to part 50, shall:

* * * * *

18. In § 73.70, paragraph (c) is revised to read as follows:

§ 73.70 Records.

* * * * *

(c) A register of visitors, vendors, and other individuals not employed by the

licensee pursuant to §§ 73.46(d)(13), 73.55(d)(6), or 73.60. The licensee shall retain this register as a record, available for inspection, for 3 years after the last entry is made in the register.

* * * * *

19. In appendix B to part 73, the Introduction is revised to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

* * * * *

Introduction

Security personnel who are responsible for the protection of special nuclear material on site or in transit and for the protection of the facility or shipment vehicle against radiological sabotage should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties. In order to ensure that those individuals responsible for security are properly equipped and qualified to execute the job duties prescribed for them, the NRC has developed general criteria that specify security personnel qualification requirements.

These general criteria establish requirements for the selection, training, equipping, testing, and qualification of individuals who will be responsible for protecting special nuclear materials, nuclear facilities, and nuclear shipments.

When required to have security personnel that have been trained, equipped, and qualified to perform assigned security job duties in accordance with the criteria in this appendix, the licensee must establish, maintain, and follow a plan that shows how the criteria will be met. The plan must be submitted to the NRC for approval and must be implemented within 30 days after approval by the NRC unless otherwise specified by the NRC in writing.

* * * * *

20. In appendix C to part 73, the Introduction is revised and a new section on Audit and Review is added to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans

Introduction

A licensee safeguards contingency plan is a documented plan to give guidance to licensee personnel in order to accomplish specific defined objectives in the event of threats, thefts, or radiological sabotage relating to special nuclear material or nuclear facilities licensed under the Atomic Energy Act of 1954, as amended. An acceptable safeguards contingency plan must contain: (1) a predetermined set of decisions and actions to satisfy stated objectives, (2) an identification of the data, criteria, procedures, and mechanisms necessary to efficiently implement the decisions, and (3) a stipulation of the individual, group, or organizational entity responsible for each decision and action.

The goals of licensee safeguards contingency plans for responding to threats, thefts, and radiological sabotage are:

(1) to organize the response effort at the licensee level,

(2) to provide predetermined, structured responses by licensees to safeguards contingencies,

(3) to ensure the integration of the licensee response with the responses by other entities, and

(4) to achieve a measurable performance in response capability.

Licensee safeguards contingency planning should result in organizing the licensee's resources in such a way that the participants will be identified, their several responsibilities specified, and the responses coordinated. The responses should be timely.

It is important to note that a licensee's safeguards contingency plan is intended to be complementary to any emergency plans developed pursuant to appendix E to part 50 or to § 70.22(i) of this chapter.

* * * * *

Audit and Review

At intervals not to exceed 12 months, the licensee shall provide for a review of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of safeguards contingency procedures and practices, and an audit of commitments established for response by local law enforcement authorities.

The licensee shall document the results and the recommendations of the safeguards contingency plan review, management findings on whether the safeguards contingency plan is currently effective, and any actions taken as a result of recommendations from prior reviews in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. The report must be maintained in an auditable form, available for inspection for a period of 3 years.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

21. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201; sec. 201, 88 Stat. 1242 as amended, (42 U.S.C. 5841). Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. In § 75.4, paragraph (f)(1) is revised to read as follows:

§ 75.4 Definitions.

* * * * *

(f) *Effective Kilogram* * * *

(1) For special nuclear material: The amount specified in § 70.4 of this chapter.

* * * * *

Dated at Rockville, Maryland this 14th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–17666 Filed 7–28–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 561, 563, 563c, 567, and 571

[No. 92–26]

RIN 1550–AA01

Miscellaneous Capital and Capital-Related Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations by modifying or removing obsolete or incorrect references to its regulations setting minimum regulatory capital requirements for savings associations. The OTS is also correcting citation errors and adding language clarifying the provisions contained in its risk-based capital regulation and the capital distribution regulation. The final rule also clarifies the treatment of sales with recourse and maturing capital instruments for purposes of the capital regulations and removes the accounting provisions for deferred loan losses.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager, (202) 906–6465, Deborah Kennedy, Program Analyst, (202) 906–7324, Policy; Theresa Stark, Senior Attorney, (202) 906–7054, Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On November 8, 1989 the OTS published an interim final rule establishing the minimum regulatory capital requirements for savings associations as required by section 5(t) of the Home Owners' Loan Act, 12 U.S.C. 1464(t). 54

FR 46845 (Nov. 8, 1989). Because the capital regulations were promulgated as an interim final rule, the OTS requested further comment on all aspects of the rule.

On November 30, 1989 the OTS published a final rule transferring and recodifying regulations of the former Federal Home Loan Bank Board (Bank Board) and the Federal Savings and Loan Insurance Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). 54 FR 49411 (Nov. 30, 1989). This rule changed, reorganized, and removed obsolete references from the OTS's regulations made necessary by the passage of FIRREA. It also incorporated the text of the interim final minimum regulatory capital regulation, which had been adopted before the recodification. Certain typographical and other technical errors appeared in part 567 as it was printed in one or both of these documents and have been codified into the Code of Federal Regulations.

The OTS is today amending its capital regulations to conform the regulatory language to the intent of the OTS as expressed in the preamble to the interim final rule and to correct technical errors. The OTS is also amending its accounting requirements as they relate to deferred loan losses and open-end management companies. The removal of these regulatory provisions was proposed as part of a larger group of amendments to the accounting and reporting requirements for thrifts published at 56 FR 13085 (March 29, 1991) to conform with the capital treatment of those items as explained in 54 FR 46845, 46862–3 (Nov. 8, 1989).

The amendments made today were proposed on April 16, 1991. Some of the proposed amendments to part 567 were purely technical, such as the addition of a comma or removal of a parenthesis to clarify the meaning of a paragraph. Several other amendments were proposed to clarify the regulations in accordance with the statements of policy contained in the preamble to the interim final rule. For example, the definition of "qualifying multifamily mortgage loan" was amended to indicate that multifamily loans must be first mortgage loans to meet the definition. The OTS also proposed conforming amendments in order that all regulations cross-referencing the capital requirements for savings associations would refer to the appropriate requirements under part 567. In addition to these amendments, the proposal introduced regulatory changes of a more substantive nature for comment, including a definition of the term "recourse" for capital purposes and those amendments proposed by the Office of the Comptroller of the Currency (OCC) to its capital requirements. 55 FR 42017 (Oct. 17, 1990).

I. Summary of Comments; OTS Response

The OTS received a total of 33 comment letters in response to its proposed capital and capital-related amendments. Those who submitted comments included: 15 savings associations; 13 trade associations; three law firms; one government corporation; and one member of the United States Senate. The OTS also reviewed and considered 19 comment letters received in response to the invitation to comment on the interim final capital rulemaking while preparing this final rule.

Today's amendments are meant to bring consistency to the capital requirements of 12 CFR part 567 and to other, existing regulations that are tied to capital. Today's rulemaking is not intended to modify or update substantive aspects of those regulations that may otherwise require such attention. Rather, the OTS will address the policy issues raised by these amendments in future rulemakings.

A. "In Compliance" With Capital Standards

The OTS received 30 comment letters regarding whether thrifts operating in compliance with a capital plan approved by the OTS should be deemed to be "in compliance" with their capital requirements. All of these commenters urged adoption of the position of the OCC, which is set forth at 12 CFR 3.7 (1992).[1] The commenters strongly urged that institutions with approved capital plans be deemed to be in compliance with capital requirements generally. Many suggested that OTS's regulatory concerns regarding individual thrifts be handled on a case-by-case basis at the time a particular thrift's capital plan is approved.

The commenters argued that negative consequences result from OTS's current policy, which is that an institution operating under an approved capital plan is not deemed to be in compliance with its capital requirements. The negative consequences most frequently mentioned were: (1) Thrifts' competitive disadvantage vis-a-vis banks in raising capital and attracting deposits; (2) the erosion of public confidence in thrift institutions operating under approved capital plans; and (3) the effect on contractual arrangements such as debentures, mortgage servicing arrangements, and bond and liability insurance.

Several commenters believed that the recovery of the thrift industry would be further hindered unless institutions with approved capital plans are deemed to be in compliance with their capital requirements. Many also argued that the legislative history of FIRREA supports adoption of the same policy as the OCC follows and adherence to the principle that no thrift should be deemed out of compliance with its capital requirements unless its plan has been affirmatively rejected by the OTS.

After careful consideration of these comments, the OTS has determined to modify its policy as follows: A thrift will be deemed to be in compliance with section 567.2 of OTS's regulations [2] if: it is operating under an approved capital plan, and it is not critically undercapitalized within the meaning of section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) [3] and OTS regulations implementing that section. Neither the OTS nor the other Federal banking agencies have yet promulgated regulations implementing FDICIA's prompt corrective action provisions. Until the OTS's final implementing regulations take effect, a thrift will not be deemed to be critically undercapitalized for the purposes described here unless it has core capital [4] of less than 2%.

A thrift satisfying these two criteria may represent that it is in compliance with section 567.2. The thrift will not be able to avail itself of the more flexible treatment accorded well capitalized thrifts under OTS's differential regulation approach, however. The OTS has many regulations and policies that are applied differently depending on a savings association's actual capital levels. The OTS intends to maintain a clear distinction based on actual capital levels for purposes of applying these

[1] Section 3.7 requires that any bank having capital ratios lower than the minimum ratios required under 12 CFR 3.6 must submit a capital plan. The bank may assume that its plan is acceptable unless the OCC notifies it to the contrary. Moreover, "[a] bank in compliance with an acceptable plan to achieve the applicable minimum capital ratios will not be deemed to be in violation of § 3.6." 12 CFR 3.7 (1992).

[2] 12 CFR 567.2 (1992). Section 567.2 is the analogue of § 3.6 of the OCC's regulations: it sets forth the minimum capital requirements applicable to savings associations just as § 3.6 does for national banks.

[3] Pub. L. 102–242, 105 Stat. 2236, 2253 (Dec. 19, 1991).

[4] Core capital is defined at 12 CFR 567.5 (1992).

regulations and policies. Accordingly, OTS will continue to permit the most flexible treatment only for those institutions that meet or exceed the minimum statutory requirements of section 5(t)(2) of the Home Owners' Loan Act (HOLA). 12 U.S.C. 1464(t)(2). Those requirements currently include: 1.5% tangible capital; 3% core capital; [5] and the currently applicable risk-based capital requirement of 7.2%.

B. Recourse

OTS proposed to adopt the definition of recourse set forth in the June 1990 Federal Financial Institutions Examination Council (FFIEC) request for comment for capital purposes. The OTS received nine comments addressing the proposed definition of "recourse." One commenter applauded the OTS's effort to clarify the term, even if only temporarily, prior to the FFIEC's final report. Eight comments were critical of the proposal.

Many commenters thought that the final definition developed by FFIEC would be less stringent than the proposal and, therefore, that the OTS should not attempt to define the term before FFIEC's final action. Several commenters thought that an interim definition would serve only to confuse matters and to increase transaction costs overall.

Several commenters found the language of the proposed definition unclear, overbroad, and indefinite. These commenters pointed out that one could interpret the definition to include standard representations and warranties, implicit recourse arrangements, and non-credit risks such as interest rate, liquidity, currency, market and prepayment risks. The commenters uniformly argued that standard representations and warranties should be exempted from the definition because of the adverse impact on the secondary mortgage market that would result. The commenters also agreed that the definition should not apply to implicit recourse arrangements because no legally enforceable recourse arrangement exists. Commenters also favored separating the credit risks from other forms of risk and requested clarification of the definition.

Two commenters favored recognition of third party guarantees, such as mortgage insurance, in the definition of recourse. These commenters argued that where a savings association purchases insurance for the amount of recourse retained, then the risk of default on the underlying mortgages is effectively transferred from the association to the third party insurer.

Several other commenters favored the adoption of the Federal Reserve's treatment of spread accounts and risk-sharing arrangements. A spread account is an off-balance sheet account where funds accumulate in the account either through a charge against earnings or based on the difference between the rate paid to the purchasers of the securities and the higher yield on the underlying mortgages. Losses are charged against the spread account. Under risk-sharing arrangements, buyers and sellers proportionately share in any losses. Those commenters favoring the Federal Reserve's approach stated that the Federal Reserve currently excludes spread accounts and risk sharing arrangements from the definition of recourse, and urged OTS to do the same.

Finally, in response to the request for comments regarding the OCC's outstanding proposal on recourse, commenters were uniformly critical. The OCC has proposed to amend footnote 14 of its risk-based capital guidelines (regarding assets sold with recourse) to clarify that assets sold with recourse are included for purposes of computing a national bank's capital requirement even though a sale with recourse qualifies for sales treatment under the Call Report. The OCC has stated in its proposal, however, that it does not intend that mortgage sales should be included as "assets sold with recourse" for risk-based capital purposes if they carry less than significant risk of loss and meet certain other criteria. The criteria are: (1) the bank has not retained more than a minimal risk of loss; (2) the maximum amount of exposure to loss that the bank has retained at the time of the transfer is equal to or less than the amount of probable loss that the bank has reasonably estimated that it will incur on the transferred mortgages; and (3) the bank has created a liability account or other special reserve in an amount equal to its maximum exposure. See 55 FR 42017, 42020 (Oct. 17, 1990).

The commenters favored the approach the OTS has taken in Regulatory Bulletin 26 (April 26, 1991) (RB 26), recognizing limited recourse, rather than the proposed OCC approach. One commenter argued that the OCC's proposal would be highly problematic for thrifts selling loans into the mortgage securities market. In particular, the commenter stated that the proposed OCC requirement that the amount of recourse retained may not exceed the actual expected losses on the loans sold does not conform to long-standing practices in the mortgage securities market requiring credit enhancements greater than the actual expected loss. This commenter urged the OTS not to adopt the OCC proposal because it does not give credit or incentive for negotiating limited recourse arrangements where the exposure is greater than actual expected loss but less than the applicable capital requirement. Moreover, the commenter urged that the OTS not adopt the OCC proposal as part of a technical amendments package because of the significant impact on the mortgage securities industry. In fact, the commenter requested that the OTS repropose the recourse issue separately to provide for a more extensive discussion of all of the issues involved.

The OTS has determined that the benefits of defining recourse only for risk-based capital purposes outweigh the drawbacks identified by commenters. The OTS wishes to clarify that the definition adopted today does not include risks other than credit risk. Also excluded from the definition are contractual conditions that are under the direct control of the thrift or may be verified by the thrift at the time the contract is entered. The OTS does not intend, however, to exclude recourse obligations arising from contractual agreements that may be commonplace in the industry but over which the thrift has no control. The definition of "standard representations and warranties" is also under review in an interagency context and may be subject to further modification.

Implicit recourse arrangements are only included in the definition to the extent that OTS observes, with respect to a particular institution, a pattern of behavior in its transactions that, if consistently used to provide recourse, will be treated as recourse for capital computation purposes. Thus, OTS intends to retain enough flexibility in the definition of recourse to capture transactions that are intended to evade the capital regulations.

The OTS will reserve its response to the comments regarding third party guarantees at this time because that issue is being addressed by a FFIEC working group. The OTS will continue to participate in the FFIEC effort to develop a comprehensive treatment for recourse arrangements and represent the views of commenters on this issue in the context.

At this time, the OTS has decided not to adopt the same approach as the OCC has taken in its proposal regarding asset

[5] The OTS has proposed a regulation that would increase the leverage ratio requirement. 56 FR 16,283 (April 22, 1991).

sales with recourse. The OCC modifications are designed to clarify that, for risk-based capital purposes, loan sales with recourse under programs of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) are considered sales with recourse. The OTS's current rule is clear with respect to this issue.[6] The amendment made to the OCC rule creates a difference between the two agencies' treatment of loan sales with recourse; the OTS believes, however, that the FFIEC working group addressing recourse will resolve such differences.

C. Non-Includable Subsidiaries

Four commenters addressed the treatment of investments in subsidiaries engaged as of April 23, 1989 in activities not permissible for a national bank. One commenter fully supported the approach set forth in the proposal: grandfathering the amount of a thrift's investment in its nonincludable subsidiary that existed on April 12, 1989, rather than each actual investment in the subsidiary. Thus, the amount of the investment subject to the phase-out would be the lesser of the current amount invested or the amount invested on April 12, 1989. For example, as of April 12, 1989, a thrift had $20 million invested in a nonincludable subsidiary. During 1990, the level of the investment decreased by $15 million to $5 million. During 1991, the investment in the subsidiary increases by $7 million to $12 million. The mount of investment that is subject to grandfathering on January 1, 1992, is $12 million since this is the lower of the current amount invested and the $20 million invested as of April 12, 1989.

Three commenters raised an issue related to the requirement that was not addressed in the proposal. Two of these three commenters said that the proposed amendments could be interpreted to mean that, in determining the amount of investments to be deducted from assets and capital, a savings association must compare current and April 12, 1989 investment levels for each non-includable subsidiary separately, rather than for all non-includable subsidiaries as a whole. The commenters argued that a subsidiary-by-subsidiary investment test will lead to inconsistent capital deductions among similarly situated savings associations during the phase-in period. In other words, some associations will be penalized because of the form of the corporate structures on April 12, 1989.

After considering these comments, the OTS has revised the proposed amendment to 12 CFR 567.5(a)(2)(v)(A) to remove any ambiguity that could be construed to require savings associations with similar investments in one or more subsidiaries to deduct those investments differently based on the corporate structure of the initial investments.

D. Miscellaneous Amendments

Two commenters supported the proposed amendments to the capital distributions regulation, 12 CFR 563.134. Three commenters supported the amendment to permit savings associations to treat maturing capital instruments issued on or before October 7, 1989 on the same basis as those issued afterward.

Two commenters raised concern regarding the liability growth regulation, 12 CFR 563.131. Both commenters thought that the reference to 6% of liabilities was redundant, confusing and unnecessary. After consideration of these comments the OTS agrees that the reference to 6% of liabilities is obsolete and is deleting that portion of the regulation.

The OTS received comments regarding purchased mortgage servicing rights (PMSRs). One commenter objected to the language that would require PMSRs to meet the three-part test of 12 CFR 567.5(a)(2)(ii) because it would reopen the determination and confuse matters. Section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 requires Federal financial institutions regulators to address PMSRs. This section takes effect on February 17, 1992. OTS anticipates that in conjunction with other regulatory agencies it will re-examine this issue and may propose regulatory changes. In the interim, in light of its new statutory authority under this section, OTS is temporarily leaving § 567.5(a)(2)(iii) unchanged.

One commenter asked for clarification that the term "qualifying mortgage loan" includes a loan to individuals for the purchase and construction of their own homes, secured by a first mortgage on the home. This commenter points out that this position would be consistent with the OCC's regulations.

The OTS has previously opined [7] that loans to individuals for the purchase and construction of their own homes are includable in the 50% risk-weight category if the loan meets all of the other qualifications of a "qualifying mortgage loan." The OCC explicitly addresses this issue in its risk-based guidelines. The OTS is adding comparable language to its regulation to clarify this point. The OTS is also taking this opportunity to clarify that non-qualifying mortgage loans that did not qualify solely due to loan-to-value ratios at origination and are subsequently paid down to a loan-to-value ratio of less than 80 percent (calculated using value at origination) may become qualifying loans if they meet all other requirements for qualifying mortgages.

One commenter, discussing the conforming changes from "regulatory capital" to "total capital," argued that these changes were not merely technical but would, if adopted, have significant substantive effects. The commenter argued that total capital would exclude or limit certain pre-FIRREA regulatory capital and, in so doing, would increase the capital levels required. Another commenter pointed out that the conforming amendments fail to change the term regulatory capital in 12 CFR 545.82(e).

The OTS believes that it has provided adequate notice and opportunity to comment on the proposed changes to the regulations tied to capital levels. It believes that the use of "total capital," rather than "core capital" or "tangible capital" in setting these levels best approximates the earlier levels tied to "regulatory capital."

Finally, the OTS received one comment regarding the removal of the regulatory provisions for deferred loan losses after the publication of the proposed amendments to the accounting and reporting requirements earlier this year. The commenter, a trade association, asserted that FIRREA mandated the removal of deferred loan losses and, therefore, agreed with the OTS's proposal to remove § 563c.14 and references to deferred loan losses contained in § 563.233 (c) and (d). The OTS is making those changes to bring this section into conformity with the capital rule revisions promulgated in November 1989. Other amendments to § 563.233 proposed in March are deferred until such time as the proposed amendments to the accounting and reporting requirements are finalized.

II. Description of Final Rule

Today's final rulemaking does not differ significantly from the proposal. Aside from changes made in response to comments received by the OTS, as discussed above, the major differences between today's rule and the proposal are: (1) The removal of the regulatory provisions for deferred loan losses (discussed above in section I.D.); (2) the

[6] See 12 CFR 567.6(a)(2)(i)(C) (1992).

[7] Chief Counsel Op., May 14, 1991.

deletion of section 563.94 (mortgage transactions with the Federal Home Loan Mortgage Corporation); and (3) the addition of several paragraphs of regulatory language modelled upon that proposed by the OCC.

Upon further reflection, OTS determined that the amendments proposed to 12 CFR 563.94 would render the regulation superfluous. Furthermore, the deletion of this section has no impact on other regulatory provisions. Thus, the section is removed in today's final rule.

The changes based on the OCC's October, 1990 proposal are adopted by the OTS pursuant to FIRREA's mandate that the OTS adopt "all relevant substantive definitions" established by the OCC for national banks and that the standards prescribed by the OTS be no less stringent than the capital standards applicable to national banks. The amendments that the OTS expects to be finalized by the OCC include definitions of the terms "central government", "original maturity", and "unconditionally cancelable". The amendments also add two items to the 20 percent risk-weight category and add certain unused commitments to the zero percent credit conversion factor under certain circumstances.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The Director of the Office of Thrift Supervision has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The collections of information referenced in this proposed rule may be found at 12 CFR 545.74, 545.82, 563.10, 563.131, 563.173, and 567.5. The approval of investments in and activities conducted by a service corporation contained in § 545.74 constitutes a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0013. The OTS requires this information to ascertain whether such activities of the service corporation reasonably relate to the activities of the parent savings association, and whether such activities are being conducted in the best interest of the association. The OTS requires this information only when a savings association files an application or notice with the OTS.

The approval of activities, the issuance of additional securities by, and the providing of capital by a Federal savings association to establish a finance subsidiary contained in § 545.82 constitute a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0033. The OTS requires this information to ascertain whether the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary or the issuance of additional securities by an existing finance subsidiary, is likely to adversely affect the financial condition or the safe and sound operation of the parent Federal savings association.

The approval to issue earnings-based accounts in an amount of up to 20% of the savings association's assets and information describing in detail the loans to be used in calculating the contingent interest on the certificates contained in § 563.10 constitute a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0027. The OTS requires this information to ascertain whether the savings association meets or exceeds its regulatory capital requirement or whether there are other bases for supervisory concern before the savings association is allowed to issue earnings-based accounts.

The approval of a savings association's growth plan to increase its total liabilities within any 2-quarter period at a rate greater than 12.50 percent contained in § 563.131 constitutes a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0028. The OTS requires this information to ascertain the effect of the growth plan upon the savings association's regulatory capital, the financial strength of the savings association, and the stability of the savings association's earnings over the 6 preceding calendar quarters.

Recordkeeping requirements for a savings association engaging in forward commitments is contained in § 563.173; it has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0011. The OTS requires these records to maintain a current register of the savings association's forward commitments, and documentation of the savings association's ability to fund all outstanding forward commitments when due.

The approval of subordinated debt securities for inclusion in a savings association's regulatory capital is contained in § 567.5; it has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0030. The OTS requires this information to ascertain whether the subordinated debt securities were issued pursuant to regulations and memoranda of the OTS, may comprise an association's supplementary capital, and may therefore be included in a savings association's regulatory capital.

No revisions are proposed to the information collections and recordkeeping requirements contained in these sections. Only technical, nonsubstantive changes are being made to these regulations.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 561

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, *Code of Federal Regulations*, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.14 is amended by revising paragraph (c) to read as follows:

§ 545.14 Determination and distribution of earnings.

* * * * *

(c) *Distribution on share accounts.* No distribution of earnings on share accounts may be made under this section until provision has been made for payment of expenses and for the pro rata portion of credits to reserves required by the Federal savings association's charter and by part 567 of this chapter.

3. Section 545.35 is amended by revising paragraph (d) to read as follows:

§ 545.35 Other real estate loans.

* * * * *

(d) A Federal savings association's aggregate investment in nonresidential real estate loans under this section shall not exceed 400 percent of the association's total capital (as calculated pursuant to 12 CFR 567.5(c)), unless the OTS finds that such additional amount will not present a significant risk to the safe and sound operation of the association and is consistent with prudent operating practices. If the OTS authorizes any Federal savings association to exceed the 400 percent of total capital limitation, the OTS shall closely monitor the condition and lending activities of such association to ensure that the association carries out all authority under section 5(c) of the Act in a safe and sound manner and complies with this paragraph (d) and all other applicable laws and regulations.

4. Section 545.38 is amended by revising paragraph (b)(3) to read as follows:

§ 545.38 Insured and guaranteed loans.

* * * * *

(b) * * *

(3) The Federal savings association invests not more than the greater of 2.5 percent of its assets or one-half of its total capital (as calculated pursuant to 12 CFR 567.5(c)) in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

* * * * *

5. Section 545.74 is amended by revising paragraph (d)(2) to read as follows:

§ 545.74 Service corporations.

* * * * *

(d) *Amount of investment.* (1) * * *

(2) In addition to the amounts that it may invest under paragraph (d)(1) of this section, an association that meets its applicable capital requirement under part 567 of this chapter may lend additional amounts as follows:

(i) An amount not to exceed the association's total capital as calculated pursuant to 12 CFR 567.5(c) may be invested in conforming loans and functionally equivalent leases made to each service corporation of which the association owns, or holds with power to vote, not more than ten percent of the capital stock; and to each joint venture in which a service corporation in which the association is a stockholder, including subsidiaries of such service corporation:

(A) Owns or holds with power to vote not more than a total of ten percent of the capital stock; or

(B) Is a limited partner and has contributed not more than ten percent of such joint venture's capital.

(ii) An aggregate outstanding amount not to exceed fifty percent of the association's total capital as calculated pursuant to 12 CFR 567.5(c) may be invested in conforming loans and functionally equivalent leases to all service corporations in which the association owns more than ten percent of the capital stock, and to all joint ventures in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

(A) Own or hold with power to vote more than a total of ten percent of the capital stock; or

(B) Are partners.

* * * * *

6. Section 545.82 is amended by removing and reserving paragraph (c)(2) and by revising the introductory text of paragraph (e) to read as follows:

§ 545.82 Finance subsidiaries.

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal savings association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent Federal savings association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent Federal savings association (subject to the limitations of paragraph (c)(1) of this section on the aggregate and per-issuance transfers by a parent Federal savings association to a finance subsidiary): *Provided,* That any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be capital as defined in part 567 of this chapter shall not, if issued by the parent Federal savings association to its finance subsidiary, be included in the parent Federal savings association's capital unless:

* * * * *

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 561—DEFINITIONS

7. The authority citation for part 561 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

8. Section 561.55 is amended by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 561.55 With recourse.

* * * * *

(b) * * *

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided,* That the savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 567 of this subchapter.

PART 563—OPERATIONS

9. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

10. Section 563.10 is amended by revising paragraphs (b)(2), (c)(1)(i), and (c)(3)(v) and by removing paragraph (d) and redesignating paragraph (e) as new paragraph (d) to read as follows:

§ 563.10 Earnings-based accounts.

* * * * *

(b) *Limitations.* * * *

(2) The savings association is in compliance with its capital requirements under part 567 of this subpchapter;

* * * * *

(c) *Permission for increased issuance.* (1) * * *

(i) Whether the savings association meets or exceeds the capital requirements specified in part 567 of this subchapter or any amount of capital required to be maintained in an applicable supervisory directive or operating agreement;

* * * * *

(3) * * *

(v) Information showing the financial condition of the applicant including, but not limited to, the applicant's capital adequacy (under part 567 of this subchapter and paragraph (c)(1)(i) of this section);

* * * * *

11. Section 563.80 is amended by revising the first sentence of the introductory text of paragraph (e)(1) to read as follows:

§ 563.80 Borrowing limitations.

* * * * *

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the savings association meets its capital requirement under part 567 of this subchapter, it shall, at least ten business days prior to issuance, file with the Regional Director or his or her designee a notice of intent to issue securities evidencing such borrowings. * * *

* * * * *

12. Section 563.84 is amended by revising the introductory text of paragraph (b)(7) to read as follows:

§ 563.84 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(7) *Eligibility requirements.* A savings association that issues or has outstanding repurchase agreements issued pursuant to paragraph (b) of this section shall calculate its total capital on a monthly basis in accordance with part 567 of this subchapter. A savings association that does not have total capital equal to the sum of one percent of all liabilities of the savings association, plus an amount equal to 20 percent of the savings association's assets classified under § 563.160 of this part, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements:

* * * * *

§ 563.94 [Removed]

13. Section 563.94 is removed.

§ 563.96 [Amended]

14. Section 563.96 is amended by removing the term "regulatory capital" and by adding in lieu thereof the phrase "total capital as determined in accordance with § 567.5(c) of this subchapter".

15. Section 563.131 is amended by revising paragraph (b) to read as follows:

§ 563.131 Liability growth.

* * * * *

(b) Any savings association is exempted from the preapproval requirement of paragraphs (a) and (c) of this section if it meets its fully phased-in capital requirements as defined in part 567 of this subchapter. Such a savings association must provide notice to OTS of its intention to grow in excess of the standard set by paragraph (a) of this section.

* * * * *

16. Section 563.134 is amended by revising paragraphs (a)(3), (a)(6), and (b)(1) to read as follows:

§ 563.134 Capital distributions.

(a) *Definitions* * * *

* * * * *

(3) *Fully phased-in capital requirement* means an association's fully phased-in capital requirements as defined in § 567.1(kk) of this subchapter.

* * * * *

(6) *Shares* means common and preferred stock; and any options, warrants, or other rights for the acquisition of such stock. This term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution. The term "share" does include:

(i) Convertible securities upon their conversion into common or preferred stock; and

(ii) Securities structured for the purpose of evading the restrictions on capital distributions in this section.

* * * * *

(b) *Limits on capital distributions*—(1) *Tier 1 Association.* (i) A tier 1 association is authorized to make capital distributions during a calendar year up to the higher of:

(A) 100 percent of its net income to date during the calendar year plus the amount that would reduce by one-half its surplus capital ratio at the beginning of the calendar year; or

(B) 75 percent of its net income over the most recent four-quarter period.

(ii) A tier 1 association shall not make capital distributions in excess of the foregoing limit except in accordance with the notice and opportunity for objection process provided by paragraph (e) of this section.

* * * * *

17. Section 563.173 is amended by revising paragraph (c)(2) to read as follows:

§ 563.173 Forward commitments.

* * * * *

(c) *Limitations* * * *

(2) *Percent of assets.* A savings association's outstanding forward commitments to purchase securities plus short put options entered into pursuant to § 563.175 of this part may not exceed an amount equal to 5 percent of its assets if total capital is 3 percent or less of assets, 10 percent of its assets if total capital is over 3 percent but less than 5 percent of assets, or 15 percent of its assets if total capital is 5 percent or more of assets.

* * * * *

18. Section 563.175 is amended by revising paragraph (a)(13)(iii) to read as follows:

§ 563.175 Financial options transactions.

(a) *Definitions.* * * *

(13) *Permissible counterparty.* * * *

(iii) A savings association that is subject to the regulation and supervision of the OTS and is in compliance with the applicable capital requirements contained in part 567 of this subchapter;

* * * * *

19. Section 563.233 is amended by revising paragraphs (c) and (d) to read as follows:

§ 563.233 Accounting principles and procedures.

* * * * *

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the OTS shall be prepared on the basis of generally accepted accounting principles.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles. Each

statement of condition shall include in bold type in the body of the statement the following language: "Federal Deposit Insurance Corporation (FDIC), an agency of the U.S. government, insures all depositors up to $100,000 in accordance with the rules and the regulations of the FDIC." A footnote indicating the savings association's regulatory capital requirements and the amount of regulatory capital that the savings association has available to meet those requirements. Regulatory capital requirements for savings associations are defined in 12 CFR Part 567. The footnote shall include the following language: "This statement has been prepared in accordance with the regulatory reporting requirements of the Office of Thrift Supervision (OTS). Tangible, Core, and Total Capital are the elements of regulatory capital determined under such reporting requirements. Regulatory capital is a basis by which the OTS determines whether a savings association is operating in a safe and sound manner."

* * * * *

PART 563C—ACCOUNTING REQUIREMENTS

20. The authority citation for part 563c is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), m, n, w.

§ 563c.14 [Removed]

21. Section 563c.14 is removed.

PART 567—CAPITAL

22. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

22a. Part 567 is amended by removing footnote 2 in § 567.5(a)(1)(ii) and by redesignating footnotes 3 through 7 as footnotes 5 through 9, respectively.

23. Section 567.1 is amended by removing paragraph (a)(2)(i) and by redesignating existing paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) as new paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii); by revising paragraphs (a)(3)(iii), (k), and (o); by removing the fourth and fifth sentences of paragraph (p) and adding three new sentences in their place; by revising paragraphs (q), (u), (v) and (w)(2)(ii)(C); by adding a new footnote 2 to paragraph (ee) introductory text between the words "goodwill" and "resulting" to read: "[2] Goodwill that has been written off of an association's balance sheet for its GAAP financial statements or Thrift Financial Report cannot be counted as supervisory goodwill."; by revising paragraph (gg) and by adding new paragraphs (kk) and (ll) to read as follows:

§ 567.1 Definitions.

(a) *Adjusted total assets.* * * *

(3) * * *

(iii) Investments in any subsidiary subject to consolidation under paragraph (a)(2)(ii) of this section; and

* * * * *

(k) *High quality mortgage-related securities.* The term *high quality mortgage-related securities* means any mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), and any mortgage-backed securities issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It includes mortgage-backed bonds meeting rating and collateral requirements equivalent to those established under 15 U.S.C. 78c(a)(41).

* * * * *

(o) *Mortgage-related securities.* The term *mortgage-related securities* means any mortgage-related qualifying securities under section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), *Provided,* That the rating requirements of that section shall not be considered for purposes of this definition.

(p) *OECD-based country.* * * * The term *Central government* means the national governing authority of a country; it includes the departments of ministries and agencies of the central government and the central bank. The U.S. Central Bank includes the 12 Federal Reserve Banks. The definition does not include the following: State, provincial or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

(q) *Original maturity.* The term *original maturity* means, with respect to a commitment, the earliest date after a commitment is made on which the commitment is scheduled to expire (*i.e.*, it will reach its stated maturity and cease to be binding on either party), *Provided,* That either:

(i) The commitment is not subject to extension or renewal and will actually expire on its stated expiration date; or

(ii) If the commitment is subject to extension or renewal beyond its stated expiration date, the stated expiration date will be deemed the original maturity only if the extension or renewal must be based upon terms and conditions independently negotiated in good faith with the customer at the time of the extension or renewal and upon a new, *bona fide* credit analysis utilizing current information on financial condition and trends.

* * * * *

(u) *Qualifying mortgage loan.* The term *qualifying mortgage loan* means a 1–4 family residential first mortgage loan that is prudently underwritten and is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. Nonqualifying mortgage loans that are subsequently paid down to a loan-to-value ratio of less than 80 percent (calculated using value at origination) may become qualifying loans if they meet all other requirements for qualifying mortgages. Loans to individual borrowers for the construction of their own homes may be included as qualifying mortgage loans.

(v) *Qualifying multifamily mortgage loan.* The term *qualifying multifamily mortgage loan* means a first mortgage loan on an existing property consisting of 5–36 dwelling units with an initial loan-to-value ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units has existed for at least one year.

(w) *Qualifying supervisory goodwill.*

* * *

(2) * * *

(ii) * * *

(C) Minus the amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of—

(*1*) 20 years; or

(*2*) The remaining period for amortization in effect on April 12, 1989 under regulatory accounting practices.

* * * * *

(gg) *Unconditionally cancelable.* The term *unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the savings association may, at any time, with or without cause, refuse to advance funds

or extend credit under the facility. In the case of home equity lines of credit, the savings association is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

* * * * *

(kk) *Recourse.* The term *recourse* means the acceptance, assumption, or retention of some or all of the risk of loss generally associated with ownership of an asset. It is not necessarily a function of ownership or prior ownership of an asset, nor does it arise only as an incident of an asset sale.

(ll) *Fully phased-in capital requirements.* The term *fully phased-in capital requirements* means the capital requirement that will be effective at the expiration of all transition periods and phase-ins established by section 5(t) of the Act or by this part 567.

24. Section 567.2 is amended by revising the heading of paragraph (b) and paragraph (b)(2) to read as follows:

§ 567.2 Minimum regulatory capital requirements.

* * * * *

(b) *Transition period for risk-based capital requirement.* * * *

(2) From December 31, 1990 until December 30, 1992, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 90% of the amount required under paragraph (a)(1) of this section.

* * * * *

§ 567.4 [Amended]

25. Section 567.4 is amended in paragraph (a)(1) introductory text by removing the phrase "12 U.S.C. 1464(d)(2)" and adding in lieu thereof the phrase "12 U.S.C. 1464(s)" and in the concluding text of paragraph (a)(1) by removing the phrases "12 U.S.C. 1464(d)(8)" and "12 U.S.C. 1464(d)(2)" and adding in both places the phrase "12 U.S.C. 1818".

26. Section 567.5 is amended by adding new footnote 3 to paragraph (a)(1) introductory text between the words "elements," and "less" to read: "[3] Stock issues where the dividend is reset periodically based on current market conditions and the savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of cumulative or noncumulative characteristics."; by adding new footnote 4 to paragraph (a)(1)(ii) after the word "surplus" to read: "[4] Stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report, likewise shall not be considered in calculating capital. For example, preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries shall not be included in capital. Similarly, common stock with mandatorily redeemable provisions is not includable in core capital."; by adding a semicolon in place of the comma at the end of paragraph (a)(1)(ii); by adding a semicolon in place of the period at the end of paragraph (a)(1)(iv); by revising paragraphs (a)(2)(v)(A) introductory text and (b)(3)(i); and by revising newly designated footnote 7 in paragraph (b)(4) to read as follows:

§ 567.5 Components of capital.

(a) *Core Capital.* * * *

(2) *Deductions from core capital.*

* * *

* * * * *

(v)(A) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with paragraph (a)(2)(v) of this section. The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, core capital the applicable percentage set forth in paragraph (a)(2)(v)(B) of this section of the lesser of:

* * * * *

(b) *Supplementary Capital.* * * *

(3) *Transition rules for maturing capital instruments.—(i) Maturing capital instruments issued on or before November 7, 1989.* All maturing capital instruments issued on or before November 7, 1989, are includable in supplementary capital to the extent such instruments were includable in capital pursuant to the regulations of the OTS in effect as of that date, including any applicable amortization schedules. With the prior approval of the OTS, a savings association may include maturing capital instruments issued on or before November 7, 1989, in supplementary capital in accordance with the treatment set forth in paragraph (b)(3)(ii) of this section.

* * * * *

[7] The amount of the general valuation loan and lease loss allowances that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of the assets required to be deducted under § 567.6 in establishing risk-weighted assets—"excess GVA" defined as assets required to be deducted from capital under § 567.5(a)(2). A savings association may deduct excess GVA from the gross sum of risk-weighted assets (*i.e.*, risk-weighted assets including general valuation allowances) in computing the denominator of the risk-based capital standard. Thus, a savings association will exclude the same amount of excess GVA from both the numerator and the denominator of the risk-based capital ratio.

27. Section 567.6 is amended by revising the first sentence of the introductory text of paragraph (a); by adding a semicolon in place of the period at the end of paragraphs (a)(1)(ii)(N) and (O) and by revising paragraphs (a)(1) heading and (a)(1)(ii)(R) and adding paragraph (a)(1)(ii)(S); by revising paragraph (a)(1)(v)(A); by revising the heading for paragraph (a)(1)(vi) and paragraph (a)(1)(vi)(A); by redesignating paragraph (a)(1)(vi)(C) as paragraph (a)(1)(vi)(C)(*1*) and by adding a new paragraph (a)(1)(vi)(C)(*2*); by revising the heading and the introductory text of paragraph (a)(2); by revising the parenthetical at the end of paragraph (a)(2)(i)(C); and by revising paragraphs (a)(2)(iv) heading and (a)(2)(iv) (A) through (C) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* Risk-weighted assets equal assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk weight as set forth in this section. * * *

(1) *On-balance sheet assets.* * * *

(ii) *20 percent risk weight (Category 2).* * * *

(R) Claims on, or guaranteed by depository institutions other than the central bank, incorporated in a non-OECD country, with a residual maturity of one year or less;

(S) That portion of local currency claims conditionally guaranteed by central governments of non-OECD countries, to the extent the savings

association has local currency liabilities in that country.

* * * * *

(v) *200 percent risk weight (Category 5).* (A) All repossessed assets or assets that are more than 90 days past due, *provided,* that 1–4 family residential mortgage loans that are more than 90 days past due are placed in the 100 percent risk weight category;

* * * * *

(vi) *Indirect ownership interests in pools of assets.* (A) Except as provided in paragraph (a)(1)(vi)(C) of this section, assets representing an indirect holding of a pool of assets, *e.g.,* mutual funds, are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the pool.

* * * * *

(C) (*1*) * * *

(*2*) The minimum risk weight that may be assigned to an ownership interest described in this paragraph (a)(1)(vi) is 20%.

(2) *Off-balance sheet activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk weight category depending on the obligor (*i.e.,* the 20 percent risk weight category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party) and any underlying collateral, *provided* that, the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. Guarantees and other direct credit substitutes by savings associations of the obligations of their service corporations and subsidiaries that qualify as equity investments are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet items to which they apply:

(i) * * *

(C) * * * (Where associations hold a mortgage-related security or a participation certificate (PC) in a mortgage loan swap with recourse, or a subordinated portion as an on-balance sheet asset, the security, PC, or subordinated portion should not be risk-weighted for purposes of the risk-based capital requirement except where the amount of capital otherwise required against the recourse liability under this paragraph would be less than the amount of capital that would otherwise be required against the security, PC, or subordinated portion. The savings association must hold in capital the greater amount of capital that would be required to be held against either the liability or the security, PC, or subordinated portion.);

* * * * *

(iv) *Zero percent credit conversion factor (Group D).* (A) unused commitments with an original maturity of one year or less;

(B) Unused commitments with an original maturity greater than one year, if they are unconditionally cancelable at any time at the option of the savings association and the savings association has the contractual right to make, and in fact does make, either:

(*1*) A separate credit decision based upon the borrower's current financial condition before each drawing under the lending facility; or

(*2*) An annual (or more frequent) credit review based upon the borrower's current financial condition to determine whether or not the lending facility should be continued; and

(C) The unused portion of retail credit card lines or other related plans that are unconditionally cancelable by the savings association in accordance with applicable law.

* * * * *

28. Section 567.9 is amended by revising paragraphs (c)(1) and (c)(3)(i) introductory text to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) *Deductions from tangible capital.* * * *

(1) Any intangible assets (except for purchased mortgage servicing rights, which are includable in assets and, therefore, not deducted from tangible capital in the lesser of the amount specified in § 567.5(a)(2)(iii)(A) of this part or any amount specified by the Federal Deposit Insurance Corporation by regulation pursuant to section 5(t)(4) of the Act).

* * * * *

(3)(i) If a savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3)(i). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, tangible capital the applicable percentage set forth in paragraph (c)(3)(ii) of this section of the lesser of:

* * * * *

29. Section 567.10 is amended by revising the heading of paragraph (a); removing and reserving paragraph (a)(1); and by revising the introductory text of paragraph (a)(2) and paragraph (f) to read as follows:

§ 567.10 Consequences of failure to meet capital requirements.

(a) *Capital plans.* (1) [Reserved]

(2) The Director shall require any savings association not in compliance with capital standards to submit a capital plan that:

* * * * *

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

30. Section 567.11 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 567.11 Reservation of authority.

(a) *Transactions for purposes of evasion.* The Director or the Regional Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this part.

* * * * *

(c) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, OTS may find that a particular type of purchased intangible asset or capital instrument constitutes or may constitute core or supplementary capital, and may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes.

* * *

PART 571—STATEMENTS OF POLICY

31. The authority citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.23 [Removed]

32. Section 571.23 is removed and reserved.

Dated: Jan. 31, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–17665 Filed 7–28–92; 8:45 am]

BILLING CODE 6720–01–M

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 8423]

RIN 1545–AP93

Taxation of Tax-Exempt Organizations' Income From Ordinary and Routine Investments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the taxation of tax-exempt organizations' unrelated business taxable income. The Service published proposed regulations on September 3, 1991 (56 FR 43571), to conform to 1978 statutory amendments regarding securities loans and to clarify that income from certain investments is not subject to unrelated business income tax. After receiving and considering public comments, the Service is finalizing the proposed regulations with modifications.

EFFECTIVE DATE: These amendments are effective for income from notional principal contracts for amounts received after August 30, 1991. See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Regina L. Oldak, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Although generally exempt from federal income taxation, an organization described in section 501(a) of the Internal Revenue Code of 1986 must pay tax on its unrelated business taxable income, as defined in section 512. Section 512(a)(1) defines unrelated business taxable income (UBTI) as generally meaning gross income from any unrelated trade or business (as defined in section 513) regularly carried on by the organization, less deductions that are directly connected with that trade or business, computed with the modifications provided in section 512(b).

Section 512(b)(1) provides that "[t]here shall be excluded all dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and annuities, and all deductions directly connected with such income." The legislative history indicates that Congress intended to exclude investment income from UBTI. See S. Rep. No. 81–2375, 81st Cong., 2d Sess. 30 (Aug. 22, 1950); H.R. Rep. No. 81–2319, 81st Cong., 2d Sess. 38 (June 23, 1950); and S. Rep. No. 94–1172, 94th Cong., 2d Sess. 3 (1976).

In response to requests for clarification regarding whether income or expense derived from certain notional principal contracts is UBTI, the Service published a Notice of Proposed Rulemaking (NPRM) on September 3, 1991 (56 FR 43571). The NPRM proposed that the list of exclusions for dividends, interest, and annuities in § 1.512(b)-1(a) be expanded to also exclude from UBTI, to the extent determined by the Commissioner in a revenue ruling, substantially similar income from an exempt organization's ordinary and routine investments in connection with a securities portfolio. The NPRM also proposed that such substantially similar income be treated as gross investment income for purposes of sections 590(e) and 4940(c)(2). The preamble to the proposed regulations included the text of a revenue ruling proposed to be issued under the authority of the regulations. The proposed revenue ruling stated that, for purposes of sections 512(b), 590(e), and 4940(c)(2), income from interest rate swaps and currency swaps was determined by the Commissioner to be substantially similar income from ordinary and routine investments in connection with a securities portfolio.

The NPRM also proposed to add payments with respect to securities loans (as defined in section 512(a)(5)) to the list of exclusions from UBTI in § 1.512(b)-1(a) in order to conform the regulations to the statute, which was amended by Public Law 98–345 (1978). No comments were received regarding this provision.

A public hearing was held on December 6, 1991.

Public comments received by the Service generally welcomed the guidance as an important step to clarify this area of the law, but suggested several modifications. Most of the comments suggested that the exclusion from UBTI should apply to all notional principal contracts, not just interest rate and currency swaps. Several comments requested that the Service expressly exclude from UBTI income from particular types of notional principal contracts, notably equity and commodity swaps. Some comments requested that the exclusions be provided in the regulations, rather than in revenue rulings. Some comments also requested that the regulations (or revenue ruling) define the term notional principal contract.

Discussion of Final Regulations

The final regulations amend the regulations under section 512(b)(1) to conform to and incorporate the 1978 statutory amendment regarding securities loans. In addition, the final regulations respond to public comments by eliminating the need for a revenue ruling and clarifying that section 512(b)(1) generally excludes not only dividends, interest, payments with respect to securities loans, and annuities, but also income from notional principal contracts. The final regulations also exclude other income from an exempt organization's ordinary and routine investments that the Commissioner determines to be substantially similar to dividends, interest, payments with respect to securities loans, annuities, and income from notional principal contracts. The final regulations further respond to public comments by clarifying that for purposes of this regulation, the term notional principal contract includes contracts defined in Treas. Reg. § 1.863–7 or regulations issued under section 446.

The final regulations clarify that the new exclusions being added to § 1.512(b)–1(a) do not apply to exempt organizations that act as brokers or dealers (including organizations that make a market in derivative financial products, as described in Treas. Reg. § 1.954–2T(a)(4)(iii)(B)) and that none of the exclusions in § 1.512(b)–1(a) affects the exclusion from UBTI of certain gains or losses under section 512(b)(5). Thus, the regulations do not affect the treatment of any gain or loss from the extinguishment, assignment, or other disposition of any swap position. Generally, a non-dealer exempt organization's gain or loss from sales or other dispositions of non-inventory property would be excluded from UBTI under section 512(b)(5). The final regulations retain and restate the current regulations' limitations with respect to income from debt-financed property and interest and annuity

income derived from controlled organizations.

The final regulations also amend the regulations under sections 509(e) and 4940(c)(2), so that investment income that is excluded from UBTI under section 512(b)(1) is included in the gross investment income of a private foundation.

One comment on the proposed regulations questioned whether, in order for an investment to be excluded as substantially similar income from ordinary and routine investments, the investment must be ordinary and routine from each exempt organization that engages in the transaction. The Service and the Treasury Department intend the phrase ordinary and routine in this context to mean investments which are ordinarily and routinely engaged in by investors in capital, commodity, and similar financial markets. In order to exclude an amount from UBTI, it is not necessary for an exempt organization to demonstrate that it ordinarily and routinely engages in such transactions.

The fact that these regulations exclude certain income from UBTI is not intended to affect determinations under any relevant fiduciary standards of state or federal law.

Dates

The effective dates of the rules of § 1.512(b)–1(a) that were in effect prior to this Treasury decision remain the same. The exclusion under § 1.512(b)–1(a)(1), and the inclusion under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1), of income from notional principal contracts is effective for amounts received after August 30, 1991. However, an organization may apply the exclusion under § 1.512(b)–1(a)(1) of income from notional principal contracts prior to that date, provided that such amounts are treated consistently for all open taxable years. Furthermore, an organization that excludes from UBTI income from notional principal contracts under § 1.512(b)–1(a)(1) prior to that date must include that income in its gross investment income under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1). Unless otherwise provided by the Commissioner, the exclusion under § 1.512(b)–1(a)(1), and the inclusion under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1), of income that the Commissioner determines to be substantially similar income from ordinary and routine investments is effective for amounts received after the date of the Commissioner's determination.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 533(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.

Drafting Information

The principal author of these regulations is Regina L. Oldak, Office of Associate Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.507–1 through 1.514(g)–1

Foundations, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Reporting and recordkeeping requirements, Trusts and trustees.

Amendment to the Regulations

The amendments to 26 CFR parts 1 and 53 are as follows:

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

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

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

Par. 2. In § 1.509(a)–3, paragraph (a)(3)(i) is amended by adding a new sentence at the end to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

(a) * * *

(3) * * *

(i) * * * For purposes of section 509(e), gross investment income includes the items of investment income described in § 1.512(b)–1(a).

* * * * *

Par. 3. In § 1.512(b)–1, paragraph (a) is revised to read as follows:

§ 1.512(b)–1 Modifications.

* * * * *

(a) *Certain Investment Income*—(1) *In general.* Dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), annuities, income from notional principal contracts (as defined in Treasury Regulations 26 CFR 1.863–7 or regulations issued under section 446), other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner, and all deductions directly connected with any of the foregoing items of income shall be excluded in computing unrelated business taxable income.

(2) *Limitations.* The exclusions under paragraph (a)(1) of this section do not apply to income derived from and deductions in connection with debt-financed property (as defined in section 514(b)). Moreover, the exclusions under paragraph (a)(1) of this section do not apply to gains or losses from the sale, exchange, or other disposition of any property, or to gains or losses from the lapse or termination of options to buy or sell securities. For rules regarding the treatment of these gains and losses, see section 512(b)(5) and § 1.512(b)–1(d). Furthermore, the exclusions under paragraph (a)(1) of this section do not apply to interest and annuities derived from and deductions in connection with controlled organizations. For rules regarding the treatment of such amounts, see section 512(b)(13) and § 1.512(b)–1(l). Finally, the exclusions under paragraph (a)(1) of this section of income from notional principal contracts and income that the Commissioner determines to be substantially similar income from ordinary and routine investments do not apply to income earned by brokers or dealers (including organizations that make a market in derivative financial products, as described in Treasury Regulations 26 CFR 1.954–2T(a)(4)(iii)(B)).

(3) *Effective dates.* The effective dates of the rules of paragraphs (a)(1) and (a)(2) of this section that were in effect prior to this Treasury decision remain the same. The exclusion under paragraph (a)(1) of this section of income from notional principal contracts is effective for amounts received after August 30, 1991. However, an organization may apply the exclusion under paragraph (a)(1) of this section of income from notional principal contracts prior to that date, provided that such amounts are treated consistently for all open taxable years. Unless otherwise provided by the Commissioner, the exclusion under paragraph (a)(1) of this section of income that the Commissioner determines to be substantially similar income from ordinary and routine investments is effective for amounts

received after the date of the Commissioner's determination.

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 4. The general authority citation for part 53 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 53.4940–1, paragraph (d)(1) is amended by adding a new sentence at the end to read as follows:

§ 53.4940–1 Excise tax on net investment income.

* * * * *

(d) * * *

(1) * * * For purposes of paragraph (c) of this section, gross investment income also includes the items of investment income described in § 1.512(b)–1(a).

* * * * *

George O'Hanlon,

Acting Commissioner of Internal Revenue.

Approved: June 16, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–17677 Filed 7–28–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–30]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 29, 1992 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9:30 a.m. to 5 p.m., August 29, 1992. If inclement weather causes the event to be postponed, the regulations will be effective from 9:30 a.m. to 5 p.m., August 30, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately forty to fifty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: July 15, 1992.

W.T. Leland,

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

[FR Doc. 92–17789 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–92–31]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/ Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 14, 1992 on the Severn River, Annapolis, Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11:45 a.m. to 4 p.m., August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Baltimore (301) 576–2520.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the U.S. Marine Corps Insertion/ Extraction Demonstration. The demonstration will be held on the Severn River in the vicinity of the United States Naval Academy. The demonstration will be conducted by personnel qualified to conduct rapell and fastrope insertion, free-fall, and static line parachute jumps and SPIE operations with one CH–46 and/or CH–53 helicopter to support such operations. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: July 15, 1992.

W.T. Leland,

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

[FR Doc. 92–17790 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–92–46]

Special Local Regulations for Marine Events; Blackbeard Pirate Jamboree; Town Point, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Blackbeard Pirate Jamboree to be held on the Elizabeth River at Town Point Park, Norfolk and

Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:15 p.m. to 3 p.m., September 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold the Blackbeard Pirate Jamboree on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The event will consist of a parade of sail followed by an orchestrated water drama with cannon fire between two vessels. Since many spectator vessels are expected to be in the area to watch the jamboree, the regulations in 33 CFR 100.501 are being implemented for the safety of life and property. The waterway will not be closed for an extended period, therefore commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: July 17, 1992.

W. T. Leland,

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

[FR Doc. 92–17792 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–92–47]

Special Local Regulations for Marine Events; 14th Annual Diet Pepsi Triathlon, Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.513.

SUMMARY: This notice implements 33 CFR 100.513 for the 14th Annual Diet Pepsi Triathlon. The swim portion of the event will be held in Wrightsville Channel between daybeacon 18 (LLNR 28050) and daybeacon 23 (LLNR 28065). These regulations restrict vessel traffic within the regulated area during the event. These Special Local Regulations are considered necessary to control vessel traffic and to provide for the safety of the participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.513 are effective from 6 a.m. to 9:45 a.m., September 27, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Fort Macon (919) 247–4548.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Wilmington Family YMCA submitted an application to hold the swim portion of the 14th Annual Diet Pepsi Triathlon at Wrightsville Beach, North Carolina. The swim portion of the triathlon will consist of approximately 700 swimmers racing in a section of Wrightsville Channel. The regulations in 33 CFR 100.513 govern the activities of the swim portion of the triathlon in Wrightsville Channel between Wrightsville Channel Daybeacon 18 (LLNR 28050) and Wrightsville Channel Daybeacon 23 (LLNR 28065). Because the swim portion of the triathlon is an event of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. The waterway will be closed during the event. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

Dated: July 17, 1992.

W.T. Leland,

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

[FR Doc. 92–17791 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–4123–2]

State Underground Injection Control Program; Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of state primacy program.

SUMMARY: The Commonwealth of Puerto Rico has submitted an application under section 1422 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h–1, for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After review of the application, the EPA has determined that the Commonwealth's UIC program for all classes of injection wells meets the requirements of the SDWA and, therefore, approves it.

EFFECTIVE DATE: This approval shall become effective on July 29, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 1992.

ADDRESSES: The public docket and supporting documents for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Walter Andrews, Chief, Drinking/Ground Water Protection Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, room 845, New York, New York 10278. Phone: (212) 264–1800.

SUPPLEMENTARY INFORMATION: Part C of the SDWA contains provisions for an UIC program. Section 1421 of the SDWA

requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDW's). The State or Commonwealth shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (1) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (2) will keep such records and make such reports with respect to its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall, by rule, approve, disapprove, or approve in part, the State or Commonwealth's UIC program.

The Commonwealth of Puerto Rico was listed as needing a UIC program on March 19, 1980 [FRL 1439–1 in Vol. 45, No. 55 of the FR]. The Commonwealth submitted an application under section 1422 on February 13, 1990, for a UIC program to be administered by Puerto Rico's Environmental Quality Board (EQB). On February 6, 1991, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by Puerto Rico's EQB. The public hearing was held on March 12, 1991, in San Juan, Puerto Rico. No public comments were received.

After review of the application, EPA has determined that the Puerto Rico UIC program submitted by Puerto Rico's Environmental Quality Board for Classes I, II, III, IV, and V injection wells meets the requirements of section 1422 of the SDWA and is hereby approved.

This program replaces the existing EPA-administered program for all Class I, II, III, IV, and V injection wells on non-Indian lands. EPA promulgated an UIC program for Puerto Rico on December 30, 1984 in order to comply with the requirement of the SDWA to promulgate a Federally-administered program in the absence of a State-administered program. Now that EPA has determined that the State-administered program meets all applicable Federal requirements, the EPA is withdrawing the EPA-administered program for Class I, II, III, IV, and Class V injection wells on non-Indian lands and establishing the State-administered program as the applicable UIC program for Class I, II, III, IV, and V injection wells on non-Indian lands in the Commonwealth of Puerto Rico.

This approval will be codified in 40 CFR part 147, State Underground Injection Control Programs, at § 147.2650 currently reserved for the State-administered program. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference into the Federal regulations. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA. See 40 CFR 147.1(e).

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

EPA has determined that an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is unnecessary because today's decision imposes no new federal reporting or record-keeping requirements.

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), The Administrator certifies that approval by EPA under section 1422 of the SDWA of the application by the Commonwealth of Puerto Rico's Environmental Quality Board will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. This rule imposes no new requirements on small entities.

In light of the absence of public comment on the proposed approval, there is good cause for making this approval effective immediately. 5 U.S.C. 553(d).

List of Subjects in 40 CFR Part 147

Administrative practice and procedure, incorporation by reference, intergovernmental relations, reporting and record keeping requirements, underground injection.

Dated: April 6, 1992.

William K. Reilly,

Administrator.

As set forth in the preamble, part 147 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart BBB—Puerto Rico

1. The authority and source citations for part 147 continue to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Source: 49 FR 20197, May 11, 1984, unless otherwise noted.

2. Section 147.2650 is revised to read as follows:

§ 147.2650 State-administered program—Class I, II, III, IV, and V wells.

The Underground Injection Control Program for all classes of wells in the Commonwealth of Puerto Rico, other than those on Indian lands, is the program administered by Puerto Rico's Environmental Quality Board (EQB), approved by the EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. This program consists of the following elements, as submitted to EPA in the Commonwealth's program application.

a. *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the Commonwealth of Puerto Rico. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the following locations: EPA, Region II, 26 Federal Plaza, room 845, New York, NY 10278; EPA, Headquarters, 401 M Street, SW., room E1101A, Washington, DC 20460; or the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(1) Underground Injection Control Regulations of the Commonwealth of Puerto Rico, Parts I through V and appendices A and B, adopted September 14, 1983 (Amended July 20, 1988).

(2) Puerto Rico Public Policy Environmental Act (PRPPE), Title 12 Laws of Puerto Rico Annotated (LPRA) Chapters 121 and 131, 1977 edition, as amended 1988 edition, and Chapter 122, 1988 edition.

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region II and the Commonwealth of Puerto Rico's EQB signed by the Regional Administrator on August 23, 1991.

(c) Statement of legal authority. (1) Attorney General's statement on the Commonwealth of Puerto Rico's Authority to apply for, assume and carry out the UIC Program, dated June 26, 1987. (2) Letter from the Governor of the Commonwealth of Puerto Rico requesting the program, dated July 16, 1987.

(d) Program description. The Description of the Commonwealth of Puerto Rico's Underground Injection Control Program, dated with the effective date October 30, 1986.

3. By revising § 147.2651 to read as follows:

§ 147.2651 EPA-administered program—Indian lands.

(a) Contents. The UIC program for all classes of wells on Indian lands in the Commonwealth of Puerto Rico is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) Effective date. The effective date for the UIC program on Indian Lands in the Commonwealth of Puerto Rico is November 25, 1988.

[FR Doc. 92-17423 Filed 7-28-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 91-269; FCC 92-259]

Widespread Implementation of Home Automation and Communication Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The adopted rule relaxes restrictions on the amount of RF energy that can be conducted onto the AC power lines by carrier current transmitters operating under 47 CFR part 15, and provides additional interference protection to AM broadcasters. The adopted rule also relaxes restrictions on the signal strength that can be used to distribute television signals throughout a home.

These changes are adopted as a result of two petitions filed by the home automation industry, a *notice of proposed rulemaking* adopted in response to these petitions, and all of the comments filed in ET Docket 91-269. These changes are intended to encourage the development of advanced home automation and communications systems.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 91-269, FCC 92-259, adopted June 18, 1992, and released July 15, 1992. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Paperwork Reduction

The changes to the rules implemented by this Report and Order will not implement new or modified information collection requirements.

Summary of the Report and Order

1. By this action, the Commission amends 47 CFR part 15 of its rules to facilitate the introduction of sophisticated, new home automation and communications systems. This is accomplished by eliminating existing requirements that unnecessarily restrict home automation and communications systems that use carrier current and master antenna technology.

2. Home automation and communications systems employ a variety of communications technologies, including the use of the home electrical wiring to distribute radio frequency (RF) signals that control or monitor appliances and other electrical devices ("carrier current"), and cables to distribute radio and television signals ("master antennas"). In 1990, the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG), and Smart House Limited Partnership ("Smart House"), filed separate petitions for rulemaking requesting that the Commission modify certain regulations in 47 CFR part 15 that posed impediments to the introduction of advanced home automation and communication technology. In response to these petitions, the Commission adopted a *notice of proposed rulemaking* (Notice) (56 FR 48502, September 25, 1991) that proposed to change the signal limits that apply to carrier current systems and to increase the maximum output signal level permitted for television and video distribution systems used in the home.

3. *Carrier Current Issues.* Carrier current systems use a home's electrical wiring as a communications path. The Commission's rules subject these systems to emission limits designed to prevent harmful interference to authorized radio communications. EIA/CEG notes that, under the current rules, carrier current systems operating on frequencies below 450 kHz are not subject to conducted emissions limits on their operating frequency. However, it further notes that harmonic and spurious emissions from such systems that are in the frequency range 450 kHz–30 MHz are subject to a conducted emission limit of 250 microvolts. We observe that carrier current systems operating on frequencies in the 450 kHz–30 MHz range are not subject to any conducted emission limits; *e.g.*, such systems are not subject to conducted limits on their operating signal, harmonics or spurious emissions. EIA/CEG asserts that there is no reason for treating carrier current systems using frequencies below 450 kHz differently from those using frequencies above 450 kHz. A test report submitted by EIA/CEG with its petition indicates that carrier current systems operating below 450 kHz would not interfere with AM radio. Accordingly, EIA/CEG requests that carrier current systems operating below 450 kHz be exempted from the present limits on conducted emissions.

4. In the notice, we proposed to eliminate the existing conducted limit for carrier current systems operating below 450 kHz. In response to concerns that this action could result in increased interference to AM broadcasting due to higher spurious emissions, we also proposed to establish a 1000-microvolt conducted limit on emissions in the AM broadcast band that would apply to all carrier current transmissions not intended to be received by a standard AM broadcast receiver.

5. Most of the parties addressing this matter support the proposed changes in the conducted limits. However, a few parties propose that we adopt additional requirements such as a limit on the cumulative emissions of all devices operating under 47 CFR part 15 within the home, RF susceptibility standards, and a prohibition of the operation of low power, nonlicensed transmitters on amateur radio, broadcasting, satellite, and Citizens Band frequencies.

6. We believe that the proposed changes to our carrier current rules are appropriate, including the 1000-microvolt limit on nonbroadcast-conducted emissions in the AM band. We find no basis for adopting additional restrictions on the use of carrier current technology. Furthermore, it is beyond the scope of this proceeding to consider changes in emission limits for other devices operating under 47 CFR part 15.

7. *Master Antenna Issues.* Signals transmitted by cable throughout a home that are intended to be received by standard TV receivers fall under the definition of a TV Interface Device (TVID) and are regulated under 47 CFR part 15. Smart House contends that the general TVID output signal limit currently contained in 47 CFR part 15 is not sufficient to ensure reliable distribution of television signals

throughout the home. Smart House notes that a 6 dB higher limit on output signals is permitted for TVIDs used as master antenna systems, and it contends that systems used in homes are in fact master antenna systems. The TVID regulations describe a master antenna system as including central distribution systems used in large buildings like apartment complexes.

8. The notice proposed to amend 47 CFR 15.115(b)(3) of the rules to define master antenna system as referring to TV interface devices employed for central distribution of television and other video signals within any building. The notice also proposed to require that such interface devices be designed to: (1) Distribute multiple television signals at the same time; (2) Distribute such signals by cable to all TV broadcast receivers in the building; and (3) Distribute all over-the-air and, if appropriate, cable signals.

9. Most of the commenters favor expanding the definition of a master antenna system to specifically include television distribution systems used in the home. Based on the comments, we are adopting a revised definition of a master antenna system that will include television and video distribution systems used in the home.

10. For the above reasons, and for reasons explained in the complete report and order, we are adopting the rule changes as proposed in the notice, with minor modifications. We are making these changes effective August 28, 1992, in order to remove as soon as possible the existing impediments to the implementation of home automation and communications systems.

11. The Final Regulatory Flexibility Analysis is contained in the text of the order.

12. Accordingly, it is ordered that under the authority contained in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 CFR part 15 of the Commission's Rules and Regulations is amended as set forth below. These rules and regulations are effective August 28, 1992. *It is further ordered* that this proceeding is terminated.

13. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, telephone 202–653–8138.

List of Subjects in 47 CFR Part 15

Computer technology, Home improvement, Labeling, Radio, Reporting and recordkeeping requirements, Communications equipment, Security measures, Telephone, Television, Wiretapping and electronic surveillance.

47 CFR part 15 is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. 47 CFR 15.3 is amended by revising the first sentence in paragraph (f) to read as follows:

§ 15.3 Definitions.

* * * * *

(f) *Carrier current system.* A system, or part of a system, that transmits radio frequency energy by conduction over the electric power lines. * * *

* * * * *

3. 47 CFR 15.31 is amended by adding a sentence to the end of paragraph (h) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(h) * * * A device which incorporates a carrier current system shall be tested as if the carrier current system were incorporated in a separate device; that is, the device shall be tested for compliance with whatever rules would apply to the device were the carrier current system not incorporated, and the carrier current system shall be tested for compliance with the rules applicable to carrier current systems.

* * * * *

4. 47 CFR 15.107 is amended by revising paragraph (c) to read as follows:

§ 15.107 Conducted limits.

* * * * *

(c) The limits shown in paragraphs (a) and (b) of this section shall not apply to carrier current systems operating as unintentional radiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: no limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in § 15.109(e).

* * * * *

5. 47 CFR 15.115(b)(3) and the note following (b)(3) are revised to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(b) * * *

(3) The term "master antenna" used in this section refers to TV interface devices employed for central distribution of television or other video signals within a building. Such TV interface devices must be designed to:

(i) Distribute multiple television signals at the same time;

(ii) Distribute such signals by cable to outlets or TV receivers in multiple rooms in the building in which the TV interface devices are installed; and,

(iii) Distribute all over-the-air or cable signals.

Note: Cable-ready video cassette recorders continue to be subject to the provisions for general TV interface devices.

* * * * *

6. 47 CFR 15.207 is amended by revising paragraph (b) to read as follows:

§ 15.027 Conducted limits.

* * * * *

(b) The limit shown in paragraph (a) of this section shall not apply to carrier current systems operating as intentional radiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: no limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in §§ 15.205, 15.209, 15.221, 15.223, 15.225 or 15.227, as appropriate.

* * * * *

Federal Communications Commission.

Donna R. Searcy.

Secretary.

[FR Doc. 92–17813 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–341; RM–7836, RM–7897]

Radio Broadcasting Services; Altamont and Bandon, OR, and Tulelake, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Western States Broadcasting, substitutes Channel 249C1 for Channel 267C at Altamont, Oregon, and modifies the license of Station KCHQ (FM) to specify operation on the lower class channel. See 56 FR 61220, December 2, 1991. At the request of Michael T. McKenna, the Commission allots Channel 243C3 to Bandon, Oregon, and Channel 243C2 to Tulelake, California, as each community's first local aural transmission service. Channel 249C1 can be allotted to Altamont with a site restriction of 24.8 kilometers (15.5 miles) southwest to accommodate petitioner's desired transmitter site, at coordinates North Latitude 42–05–36 and West Longitude 121–59–35. Channel 243C3 can be allotted to Bandon with a site restriction of 12.1 kilometers (7.5 miles) south to avoid a short-spacing to Station KACW, Channel 297C1, North Bend, Oregon, at coordinates 43–00–30; 124–25–30. Channel 243C2 can be allotted to Tulelake without the imposition of a site restriction, at coordinates 41–57–24; 121–28–30. With this action, this proceeding is terminated.

DATES: Effective September 8, 1992. The window period for filing applications for Channel 243C3 at Bandon, Oregon, and Channel 243C2 at Tulelake, California, will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–341, adopted July 6, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Tulelake, Channel 243C2.

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 267C and adding Channel 249C1 at Altamont, and adding Bandon, Channel 243C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17816 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–340; RM–7851, RM–7894]

Radio Broadcasting Services; Harbeck-Fruitdale and Rogue River, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Grants Pass Broadcasting Corporation, substitutes Channel 252C2 for Channel 252A at Harbeck-Fruitdale, Oregon, and modifies the license of Station KLDR to specify operation on the higher class channel. See 56 FR 60957, November 28, 1991. Channel 252C2 can be allotted to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements at Station KLDR's licensed transmitter site, at coordinates North Latitude 42–22–56 and West Longitude 123–16–29. At the request of Michael T. McKenna, Channel 234C3 is allotted to Rogue River, Oregon, as the community's first local FM transmission service. Channel 234C3 at Rogue River requires a site restriction of 12.0 kilometers (7.5 miles) southeast to avoid short-spacings to Stations KMGE, Channel 233C, Eugene, Oregon, and KOOS, Channel 235C1, North Bend, Oregon, at coordinates 42–21–04; 123–04–35. With this action, this proceeding is terminated.

DATES: Effective September 8, 1992. The window period for filing applications for Channel 234C3 at Rogue River, Oregon, will open on September 9. 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–340, adopted June 6, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 252A and adding Channel 252C2 at Harbeck-Fruitdale, and by adding Rogue River, Channel 234C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17817 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–94; RM–7955]

Radio Broadcasting Services, Springfield, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 234C2 for Channel 234A at Springfield, Minnesota, and modifies the construction permit for Station KLRP (FM) to specify operation on Channel 234C2 in response to a petition filed by James Ingstad Broadcasting, Inc. See 57 FR 19837, May 8, 1992. The coordinates for Channel 234C2 are 44–22–45 and 95–19–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–94, adopted July 8, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may

also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234A and adding Channel 234C2 at Springfield.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17815 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–74; RM–7952]

Radio Broadcasting Services; Byrdstown, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Donald Poore, allots Channel 244A to Byrdstown, Tennessee. See 57 FR 13328, April 16, 1992. Channel 244A can be allotted to Byrdstown, Tennessee, in compliance with the Commission's minimum distance separation requirements with a restriction of 8.1 kilometers (5.0 miles) northeast in order to avoid a short-spacing to Station WDOD–FM, Channel 243C, Chattanooga, Tennessee. The coordinates for the allotment of Channel 244A to Byrdstown are North Latitude 36–38–10 and West Longitude 85–05–22. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992. The window period for filing applications will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–74, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Byrdstown, Channel 244A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17819 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–308; RM–6691 and RM–7008]

Radio Broadcasting Services; Neenah-Menasha, Rhinelander and Rudolph, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 262C2 for Channel 261A at Neenah-Menasha, Wisconsin, and modifies the license for Station WEMI(FM) to specify operation on the higher class channel in response to a petition filed by Evangel Ministries, Inc. See 54 FR 29756, July 14, 1989. The coordinates for Channel 262C2 are 44–15–17 and 88–26–13. To accommodate the upgrade at Neenah-Menasha, we shall substitute Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin, and modify the license for Station WRHN(FM) accordingly. Canadian concurrence has been obtained for the allotment at Rhinelander at coordinates 45–38–08 and 89–22–42. The counterproposal filed by Point-Rapids Broadcasting, Inc. to substitute Channel 260C3 for Channel 260A at Rudolph, Wisconsin, and modify the license for Station WIZD(FM) has been denied (RM–7008). With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89–308, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 261A and adding Channel 262C2 at Neenah-Menasha and by removing Channel 262C1 and adding Channel 261C1 at Rhinelander.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17818 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

50 CFR Part 23

RIN 1018–AB29

Endangered Species Convention; Amendments to Appendix III

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the saffron toucanet (*Baillonius bailloni*), chestnut-eared aracari (*Pteroglossus castanotis*), red-breasted toucan (*Ramphastos dicolorus*), the spot-billed toucanet (*Selenidera maculirostris*), and the hill myna (*Gracula religiosa*) have

been added to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). A list of species contained in the CITES appendices is presented for informational purposes in 50 CFR 23.23(f). Any specimen of these five species, whether alive or dead including all parts and derivatives, is covered by the provisions of the Convention. Appendix III comprises species subject to regulation in particular CITES Party nations that have requested the cooperation of the other Parties in controlling trade in such species. The addition of the saffron toucanet, chestnut-eared aracari, red-breasted toucan, and spot-billed toucanet was initiated at the request of Argentina and the hill myna at the request of Thailand. The addition of these five birds to Appendix III of CITES entered into effect and became enforceable on June 11, 1992, under the terms of the Convention.

DATES: This action is effective on July 29, 1992. The Service will consider all comments received by September 28, 1992 on whether to enter a reservation on any or all of these species.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington, Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. The fax number is 703–358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix III includes native species that any Party nation identifies to the CITES Secretariat as being subject to regulation within its national jurisdiction for purposes of restricting or preventing exploitation, and for which it needs the cooperation of other Parties in controlling trade. Appendix II includes species that although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also includes species that must be subject to regulation in order that the trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix I includes species threatened with extinction that are or may be affected by trade.

Trade in Appendix III species, including any part or derivative not exempted, requires the issuance of either an export permit, a re-export certificate, or a certificate of origin. An export permit is required if the shipment originates from the nation that added the species to Appendix III. Export to or from other Party nations requires presentation of either "a certificate of origin" or, in the case of re-export, "a certificate from the nation of re-export", and these documents verify that specimen(s) originated from the non-listing Party nations and/or are being legally re-exported.

This notice updates the list of CITES species reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f) by adding the saffron toucanet, chestnut-eared aracara, red-breasted toucan, spot-billed toucanet, and hill myna to Appendix III as determined respectively by the governments of Argentina and Thailand, pursuant to Article XVI paragraph 1 of the Convention. Any specimen of these species, whether alive or dead including all parts and derivatives, is covered by the provisions of the Convention. The CITES Secretariat notified all Party nations on March 13, 1992 of the addition of these five birds to Appendix III. In accordance with CITES Article XVI, paragraph 2, these additions become effective June 11, 1992; 90 days after notification.

Any Party at any time may enter a reservation on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limited effects of a reservation in alleviating exporters and importers from documentation requirements were thoroughly discussed in the **Federal Register** notice of November 17, 1987 (52 FR 43924). In a resultant March 28, 1988, **Federal Register** notice (53 FR 9945; also see 53 FR 12497; 4/14/88), the Service made a procedural change in requesting comments about reservations. As there is no time limit for reserving on a species added to Appendix III, a proposed rule normally is not published; public comments on the issue of whether to enter a reservation are requested with publication of the final rule, and if appropriate, entering a reservation will be considered.

With regard to these five species of birds, the Service does not perceive any significant biological, trade, or legal issue that would warrant recommending the entering of reservation(s). It is unlikely that substantive comments for reservation(s) will be received or that any reservation would be taken. For these reasons and because a reservation if deemed appropriate can be taken at any future time, good cause exists to omit the proposed-rule notice and public-comment process, since it is unnecessary and contrary to the public interest [5 U.S.C. 553(b)].

Because the species covered in this notice were added to Appendix III of the Convention effective June 11, 1992, and because of the other reasons mentioned above, the Service finds that good cause exists for making this action effective upon publication [5 U.S.C. 553(d)].

Therefore, the Service announces the listing of the saffron toucanet, chestnut-eared aracari; red-breasted toucan, and spot-billed toucanet by Argentina and the hill myna by Thailand in appendix III of CITES, effective June 11, 1992. The Service at this time has not recommended entering any reservations(s), and would only consider doing so if valid and compelling reasons are shown that implementation of these listings is contrary to the interests or laws of the United States. A reservation on any of these five species of birds can be taken at any time; the Service now solicits comments on whether to enter reservation(s) on any of these species, for which no opportunity for comments was previously provided. The Service will consider all comments received, and if appropriate, will recommend that the United States enter reservation(s).

Note.—The Department has determined that amendments to the Convention's appendices, which result from actions of Parties to the Convention, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that these listing actions are not rules for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Notices on Appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This notice was prepared by Dr. Richard M. Mitchell, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Export, Imports, Transportation, and Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, for the reasons set forth above, Part 23, subchapter C of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 108; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. Amend § 23.23(f) by adding the following five entries of bird species, alphabetically under the appropriate taxonomic Class and Order, to:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS AVES	BIRDS		
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets:		
* * * *	*	* *	
Baillonius bailloni	Saffron toucanet	III (Argentina)	6/11/92
Pteroglossus castanotis	Chestnut-eared aracari	III (Argentina)	6/11/92
Ramphastos dicolorus	Red-breasted toucan	III (Argentina)	6/11/92
Selenidera maculirostris	Spot-billed toucanet	III (Argentina)	6/11/92
* * * *	*	* *	
Order Passeriformes:	Perching Birds:		
* * * *	*	* *	
Gracula religiosa	Hill myna	III (Thailand)	6/11/92
* * * *	*	* *	

(Addition of the saffron toucanet, chestnut-eared aracari, red-breasted toucan, spot-billed toucanet and hill myna to CITES Appendix III).

Dated: July 13, 1992.

Richard N. Smith,

Deputy Director.

[FR Doc. 92-17838 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Interim rule with request for comments.

SUMMARY: NMFS issues this interim rule to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through August 31, 1992. This area exhibits intermittently high concentrations of a brown alga, *Diclyopteris* sp. that makes trawling with TEDs impracticable. Shrimp inhabit the alga, and fishermen wish to harvest the algae to catch the shrimp. When algal concentrations are high, TEDs may reduce shrimp retention by excluding a large portion of the algae and the shrimp within. The tow time alternative will allow fishermen to harvest shrimp more productively. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow times are allowed in lieu of TEDs, and to determine whether algal concentrations continue to make TED use impracticable.

DATES: Comments on this interim rule must be submitted by August 28, 1992.

This rule is effective from July 24, 1992 through August 31, 1992, except for the exemption registration provision in § 227.72(e)(8)(i), which requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which is not yet effective. When OMB approval is received, the effective dates of § 227.72(e)(8)(i) will be announced in the Federal Register.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this interim rule should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of North Carolina. NMFS regulations at 50 CFR parts 217 and 227 require shrimp trawlers 25 feet (7.6 meters) long or longer in offshore waters of the Atlantic Area, which includes waters off North Carolina, to use approved turtle excluder devices (TEDs) in trawls from May 1 through August 31, each year. Shrimp trawlers less than 25 feet long in offshore waters of the Atlantic Area are required to limit tow times to 90 minutes or less, or use TEDs, during the same times. Tow time is defined as the

interval from trawl doors entering the water to trawl doors being removed from the water.

Algal Clogging

Shrimp fishermen in North Carolina have complained that they cannot economically catch shrimp in a limited area off North Carolina with TEDs installed due to the presence of concentrations of a winged brown alga, *Diclyopteris* sp. These fishermen harvest the alga, which contains shrimp. The area in question is approximately 30 nautical miles in length, between Rich Inlet, North Carolina (34°17.6'N. latitude) and Brown's Inlet, North Carolina (34°35.7'N. latitude) extending from the COLREGS line to 1 nautical mile offshore. The alga is reported to grow on adjacent offshore hard bottom areas. It breaks loose during storms and concentrates in shallow coastal waters.

The bottom between these two inlets consists of scattered rock, sea grasses, and brown algae. The area is a highly productive shrimp area fished historically by about 30 local shrimp trawlers. Only fishermen with local knowledge operate in these waters, and during daylight hours only because of the threat of gear loss. Fishermen report that high concentrations of algae necessitate short tow times and that they can only tow for 15–30 minutes. If algae are less concentrated, tow times can increase accordingly.

NMFS TED Testing

NMFS has very limited information about the extent of algae concentrations in this area throughout the year. NMFS gear specialists conducted an assessment of the algae problem in July 1989 and evaluated several different types of TEDs. At that time, the gear specialists documented the presence of large concentrations of brown algae near New River Inlet, which lies between Rich Inlet and Brown's Inlet. More recently, the North Carolina Division of Marine Fisheries (DMF) reported that on June 18, 1992, a shrimp trawler using TED-equipped nets in the offshore waters between Rich Inlet and Bear Inlet (Bear Inlet is north of the proposed North Carolina restricted area) experienced clogging that reduced tow times to between 15 and 30 minutes.

In conjunction with its July 1989 assessment of the algal clogging problem, NMFS tested a large, grid-type TED, specifically modified to exclude seagrass and algae, and compared it to non-TED equipped nets. Shrimp catches with and without TEDs were highly variable; both TED and non-TED equipped nets clogged with algae. The NMFS observers aboard found that more algae had been excluded from the TED equipped net and the shrimp loss was greater.

Additional weedless-type TEDs were tested by shrimp fishermen in cooperation with DMF and North Carolina Sea Grant (Sea Grant) with the same result. The weedless TEDs released a significant portion of the algae, but elimination of the algae did not solve the problem, because shrimp were also excluded.

Results of these tests show that a TED does not yet exist to allow productive shrimp trawling in high concentrations of algae. However, NMFS is continuing research and additional testing is necessary to determine whether gear modifications can allow effective shrimp trawling with TEDs under heavy algal conditions.

Recent Developments

Fishermen assert that periodic algal concentrations in this area off of North Carolina have been known to exist for many years. Prior to implementation of the sea turtle conservation regulations, fishermen were able to harvest the algae and associated shrimp using standard shrimp trawls. Tow duration was limited by abundance of algae, according to fishermen. When the sea turtle conservation regulations were first implemented from May through August of each year (54 FR 37812, September 8, 1989), fishermen complained of shrimp losses associated with TED use. More complaints were made when regulations required the use of TEDs from September 1, 1991, through April 30, 1992 (56 FR 43713, September 4, 1991). That rule effectively required year-round TED use in this fishery. Recent evidence indicates that increased sea turtle conservation measures are necessary in the Atlantic area, and NMFS has proposed regulations to require TED use in all waters, year-round, with certain exceptions, including when NMFS determines that environmental conditions make TED use impracticable (57 FR 18446, April 30, 1992).

In an April 1992 meeting involving local fishermen, NMFS, Sea Grant, and DMF, fishermen requested an exemption from TED requirements that would allow them to use limited tow times. NMFS does not believe that a limited exemption from TED requirements will adversely affect turtles if sufficient conservation measures are required. However, given the limited amount of information in this regard, as well as the limited information about algal concentrations, NMFS believes that it is only prudent to allow such an exemption to the extent that it is demonstrated that TED use is not practicable and sea turtles are adequately protected.

Sea Turtle Conservation Measures

This interim rule establishes a restricted area in which the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), or his designee, may authorize the use of restricted tow times of up to 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water) by shrimp trawlers, when NMFS finds that the concentration of brown algae makes trawling with TEDs impracticable. Shrimp trawlers are required to register with the Assistant Administrator in order to use restricted tow times in lieu of TEDs. Owners and operators of shrimp trawlers are advised that the State of North Carolina issues authorizations to fish in the North Carolina restricted area.

NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 30 minutes bottom time for trawl nets, and is within the 15–30 minute trawl times reported by the North Carolina fishermen when algae are heavily concentrated in the restricted area. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, "Decline of the Sea Turtles: Causes and Prevention," provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to that afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

A tow time restricted to 55 minutes will also facilitate enforcement of compliance with this conservation measure. Enforcement of tow-time limitations is problematic, because it is time-consuming and requires a significant presence of enforcement officers who must continually watch as a trawler deploys its nets, monitor the fishing activity throughout the timed tow, and finally, witness retrieval of the trawls. However, in this case, the shorter tow time, the relatively limited area of surveillance, and the use of on-board observers will improve enforceability.

This interim rule establishes a framework for NMFS to modify the required conservation measures through notice in the Federal Register, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, NMFS will impose any necessary additional or more stringent measures, including requiring more restrictive tow times, synchronized tow times, or termination of the TED-use exemption program, if it determines that the concentration of algae no longer makes trawling with TEDs impracticable, if NMFS determines that there is insufficient compliance with the required conservation measures, if compliance can't be monitored effectively, or if NMFS monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching, or has exceeded, the incidental take level established by the biological opinion for this rule issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes of loggerhead turtles. Finally, NMFS may impose any necessary additional conservation measures, including termination of the exemption program, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur.

This rule requires vessels participating in this program to carry a NMFS-approved observer, if requested by the Assistant Administrator, to document the incidental capture of sea turtles, and to monitor compliance with required conservation measures, including restricted tow times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Finally, NMFS authorization for the use of 55-minute tow times in the restricted area will be rescinded by publication in the Federal Register if NMFS determines that trawling with TEDs is feasible during the effective dates of this rule.

NMFS will monitor algal concentrations regularly in the restricted area through limited observer coverage and the testing of TEDs to evaluate the need for continued TED exemption for this local fishery.

The provisions of this interim rule do not preclude the State of North Carolina from implementing more stringent protective measures for sea turtles in the North Carolina restricted area.

Future Actions by NMFS

On April 30, 1992, NMFS issued a proposed rule that would expand the use of TEDs to all areas at all times of the year from North Carolina through Texas (57 FR 18446, April 30, 1992). The proposed rule contains a provision whereby the Assistant Administrator may allow compliance with tow-time restrictions as an alternative to the TED requirement if it is determined that special environmental conditions in a particular area, such as accumulation of seagrass or algae, make trawling with TED-equipped nets impracticable. The special environmental conditions must be documented by NMFS and, if a tow-time limitation is substituted for the TED requirement, observers on vessels or other measures could be required on vessels to ensure compliance.

NMFS anticipates that a long-term solution to the algae clogging problem in North Carolina will be addressed when NMFS has gathered sufficient monitoring data on the extent and duration of algae in this area, and completed research to determine whether gear modifications to allow TED use when harvesting shrimp in heavy algal concentrations is feasible. NMFS will be able to respond to environmental conditions such as this in a more timely manner when the current proposed rule (57 FR 18446) is made final. However, if that rule is not finalized by September 1, 1992, when conservation measures specified in the current regulations are no longer in effect in the Atlantic Area, NMFS will propose an extension of those regulations, including the provision to authorize restricted tow times in lieu of TEDs, if it is determined that special environmental conditions make trawling with TED-equipped nets impracticable. Accordingly, this interim rule is effective only until September 1, 1992.

Classification

The Assistant Administrator has determined that this interim rule is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This interim rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The basic regulations that this rule amends were determined not to be major.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for this action that concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), NMFS concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this rule nor the ESA preclude a state from adopting more stringent sea turtle protection measures.

Paragraph 227.72(e)(8)(i) of this rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the North Carolina restricted area. A request to make this collection has been submitted to the Office of Management and Budget (OMB). The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment on this rule. Failure to implement interim measures immediately would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this rule relieves a

restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective. NMFS is requesting public review and comment on this interim rule and will consider changes to the provisions of this rule recommended as a result of that review.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

List of Subjects

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: July 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*

2. In § 217.12, a new definition for "North Carolina restricted area" is temporarily added effective from July 24, 1992, through August 31, 1992, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

North Carolina restricted area means that portion of the offshore waters between Rich Inlet, North Carolina (34°17.6′N. latitude) and Brown's Inlet, North Carolina (34°35.7′N. latitude), the inner boundary of which is the 72 COLREGS demarcation line, as described in the definition for "inshore" in this section, and the seaward boundary of which is 1 nautical mile east of that line.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraphs (e)(2)(i) and (e)(3)(ii) are temporarily suspended from July 24, 1992 through August 31, 1992; and new paragraphs (e)(2)(v), (e)(3)(v), (e)(6)(vi) through (e)(6)(viii), and (e)(8) are temporarily added from July 24, 1992 through August 31, 1992, to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(v) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), and (e)(8) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of requirements):

(A) *Atlantic Ocean*:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(v) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(6) * * *

(vi) Trawl in the North Carolina restricted area, except as authorized in paragraph (e)(8) of this section.

(vii) Falsify information required by paragraph (e)(8)(ii) of this section.

* * * * *

(8) *North Carolina restricted area*—(i) *Registration requirement.* Any owner or operator of a shrimp trawler (regardless of length) who wishes to trawl in the North Carolina restricted area, other than those who are in compliance with paragraph (e)(2) of this section, must register with the Regional Director, NMFS, Southeast Region at least 24 hours before the first fishing trip following the effective date of this rule by telephoning at (813) 893–3163 and providing the following information:

(A) The name and official number of the vessel;

(B) The time and date of the telephone registration;

(C) The number of the State permit authorizing fishing in the restricted area;

(D) A statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and

(E) The dates trawling operations in the North Carolina restricted area are expected to be conducted.

(ii) *Observers.* If required by the Assistant Administrator, the owner and operator of a shrimp trawler trawling in the North Carolina restricted area must a carry a NMFS-approved observer.

(iii) *Tow times.* Except for those trawlers that are in compliance with paragraph (e)(2) of this section, a shrimp trawler trawling in the North Carolina restricted area must limit each tow time to 55 minutes, measured as the time from trawl doors entering the water to trawl doors being removed from the water.

(iv) *Additional sea turtle conservation measures.* The Assistant Administrator may impose additional restrictions on shrimp trawlers trawling in the North Carolina restricted area by publishing a notice in the **Federal Register**, if he determines that this is necessary to ensure the protection of endangered and threatened sea turtles, or if he determines that environmental conditions no longer make TED use impracticable.

(A) The Assistant Administrator may require more restrictive tow times, synchronized tow times, or other suitable measures, if NMFS documents the death of one or more sea turtles by vessels participating in this program, or if significant or unanticipated levels of takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur.

(B) The Assistant Administrator may terminate the exemption from required TED use specified in this paragraph (e)(8) if two or more deaths of any sea turtle by vessels participating in this program are documented, if significant or unanticipated levels of takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur, or if NMFS determines either that shrimpers are not complying with required conservation measures or that conditions are such

that it is not practicable to monitor compliance.

(C) The Assistant Administrator may terminate or limit the exemption from required TED use until September 1, 1992, if NMFS determines that algal concentrations no longer make the use of TEDs impracticable.

* * * * *

[FR Doc. 92–17893 Filed 7–24–92; 4:40 pm]
BILLING CODE 3510–22–M

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50 CFR Part 260

[Docket No. 920667–2167]

Seafood Inspection

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability to all interested persons of a new seafood inspection service based on Hazard Analysis Critical Control Point (HACCP) principles. This new service, under the NMFS voluntary, fee-for-service seafood inspection program, is a refinement of an existing inspection service. The HACCP-based service will allow participants an opportunity to receive the management and economic benefits of producing safe, wholesome, and properly labeled products more consistently and the marketing benefits of using marks associated with the program, with more efficient use of NMFS resources.

DATES: The HACCP-based inspection service is available as of July 29, 1992.

ADDRESSES: Information about the HACCP-based service may be obtained from the National Marine Fisheries Service, Inspection Services Division, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard Cano, Inspection Services Division, NMFS, 302–713–2355.

SUPPLEMENTARY INFORMATION:

Background

NMFS operates a voluntary, fee-for-service seafood inspection program under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and Reorganization Plan No. 4 of 1970. The program offers inspection, grading, and certification services, including the use of official marks which indicate that specific products have been federally inspected.

In 1971, a new provision, at 50 CFR 260.103(c), was added to the regulations (36 FR 21041, Nov. 3, 1971), which stipulated that "[o]fficial establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations." To assist official establishments in the development of quality control systems, NMFS announced and later implemented guidelines in 1972 notices in the **Federal Register** (37 FR 9328, May 9, 1972; 37 FR 16679, Aug. 18, 1972). Those guidelines, which became part of the inspection program, known today as the Integrated Quality Assurance (IQA) program, required that the quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. The guidelines, based on HACCP principles, required continuous monitoring and recordkeeping by the contracting party. Under the guidelines, the participant has also been able to grade products in accordance with U.S. grade standards and apply the U.S. Grade A and the Packed Under Federal Inspection marks to complying products.

Through the IQA program, NMFS relies on the results of product examinations conducted by the participant's quality assurance function to reduce the amount of NMFS inspection effort. The IQA program has been a significant and successful departure from the traditional practice of maintaining continuous NMFS presence in the establishment. The HACCP-based program now being made available is a refinement of the existing IQA system of inspection.

About HACCP

HACCP is a non-traditional, non-continuous inspection technique that focuses on problem prevention and problem solving by the industry. It includes identifying and monitoring potential hazards by defining the operational steps and its hazards, the critical control points, and preventative measures. It is a system that relies heavily on proper monitoring and recordkeeping by the industry, and provides for reduced destructive sampling of the finished product as compared to the end-product sampling required under the traditional or continuous inspection system, as well as the current IQA program. HACCP has been recognized to be an effective quality control and management tool since its introduction in the 1970's in the production of food for U.S. astronauts and its continued use in the low-acid canned food industry.

The National Academy of Sciences (NAS), an internationally recognized scientific organization, has acknowledged and recommended the use of HACCP principles in the food processing industry. In four separate reports on microbiological hazards, meat, poultry, and seafood, the NAS has recommended the use of HACCP since it provides a more scientific, analytical, and economical approach than that provided by traditional inspection and quality control methods. The NAS has also stated that HACCP should likewise be applied at points in the food chain other than the processing level, *i.e.*, in production, storage, transport, retail sales, and at food service establishments.

The application of HACCP principles in seafood inspection is also becoming recognized internationally as a mechanism to apply uniform inspection procedures worldwide. Canada's Quality Management Program illustrates successful implementation of HACCP concepts. The European Economic Community has completed regulatory guidelines to be implemented by each of the member states by 1993 that include the use of this concept. Other countries, such as Iceland and Thailand, have recognized the value of the HACCP approach and are proceeding to adopt its principles.

With these efforts in the forefront, the HACCP-based service offered by NMFS' voluntary seafood inspection program is consistent with the global activities to harmonize inspection protocols.

Approach and Benefits

The new HACCP-based service encompasses all products in the facility, rather than specified products as in the existing service, and addresses the following areas:

(1) Food Safety—issues usually addressed through biological, chemical or physical criteria;

(2) Food Hygiene—characteristics of a product or process relating to wholesomeness or sanitation; and

(3) Economic Fraud—illegal or misleading actions that defraud consumers, including species substitution, short weight, overglazing, and short fill.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based service is not a self-certification service. It relies on unannounced system audits by NMFS. The frequency of the audits is determined by the ability of the facility to monitor its operation. By means of these audits, NMFS reviews the records produced through industry self-monitoring. NMFS-certified industry personnel who have been trained in

HACCP principles are responsible for oversight of monitoring, recordkeeping, and laboratory analyses. The NMFS audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential risk associated with the product and/or the firm's history of compliance.

In summary, by following HACCP-based monitoring procedures, which include periodic laboratory analyses, major processing errors can be prevented. Thus, HACCP allows for industry resources—money, people, equipment—to be focused on the essential elements of the process. From a regulatory standpoint, the HACCP concept allows structuring so that NMFS inspection frequencies can be varied depending on an individual facility's controls. Therefore, firms that can demonstrate that they can maintain consistent control can be inspected less frequently. This leaves NMFS inspection resources available for problem areas.

NMFS believes that the HACCP-based service will provide an opportunity for the seafood industry to receive the management benefits of applying HACCP principles and the marketing benefits of using the marks associated with the voluntary seafood inspection program. In addition, NMFS believes the HACCP-based service will enhance the safety, wholesomeness, and economic integrity of seafood marketed in the United States, as well as improve seafood industry quality assurance and regulatory oversight at lower seafood inspection costs than presently paid to NMFS.

Fees and Charges

Fees are assessed for HACCP-based services to recover the cost of the services rendered, as required by the Agricultural Marketing Act of 1946. The fees and charges are established, assessed, and collected in accordance with the regulations set forth in 50 CFR part 260. Fees and charges may be adjusted as necessary to recover costs. The current hourly fees for the services and the laboratory costs for various analyses are set forth in a notice at 57 FR 9108 (Mar. 16, 1992). A copy of the notice is available (see **ADDRESSES**). Travel expenses associated with the service are billed separately.

Firms interested in participating in the NMFS HACCP-based inspection program will receive a packet of information by contacting the Inspection Services Division (see **ADDRESSES**). This information includes a Submission Guide which provides guidance in the development of an effective HACCP plan. At the request of the firm, NMFS will provide further assistance in developing the firm's plan, to be charged at the existing Type III rate for consultative services (currently $40.55 per hour).

After completion, the HACCP plan is submitted to NMFS for review. Review of the plan will be charged as a flat fee based on the current Type III rate for consultative services as follows:

(1) $40.55 per hour × 5 hours=$202.75, for the first process; and

(2) $40.55 per hour × 3 hours=$121.65, for each process thereafter.

In the event that NMFS suggests changes to the HACCP plan, subsequent reviews will be charged at the current Type III rate.

Following NMFS approval of the HACCP plan, NMFS validation inspection to determine that the plan is being applied successfully is charged at the current Type III rate, plus travel and laboratory costs, where necessary. The total cost of a validation inspection will vary depending on such factors as the size of the firm, the number and complexity of the processes covered under the HACCP plan, the risks associated with the products involved, and the completeness of the presented plan.

After contract implementation, the fees for the HACCP-based service will be charged at the Type I rate for in-plant inspection services (currently $32.45 per hour, except for Alaska and Minnesota). The fees for any services provided on an overtime basis or on Sunday or legal holidays will be charged at the overtime or Sunday/holiday rates (currently $48.70 per hour and $64.90 per hour, respectively). Travel costs and any laboratory analysis costs are billed separately.

NMFS will discuss fully the details of the costs with each applicant before any contractual arrangements are made. The costs associated with the program will be specific to each facility.

Use of Marks

Products produced under the HACCP-based service may bear the "Packed Under Federal Inspection" or the "U.S. Grade A" mark, or any other USDC approved mark provided that: (1) The participant identifies in-process controls and these controls are documented sufficiently to ensure compliance with the specific criteria in the appropriate U.S. grade standard or specification; and (2) end-product evaluation of the product, conducted by NMFS during system auditing, confirms the status of the product in accordance with the applicable standard or specification.

Training

Each participating facility must employ at least one NMFS-certified person trained in HACCP principles.

NMFS will provide, on a fee basis, the required HACCP training for industry personnel. The NMFS training, presently conducted in Gloucester, Massachusetts, at the National Seafood Inspection Program training facility, consists of 2 days of practical application of HACCP principles.

In addition, NMFS recognizes the interest of various organizations in providing training in HACCP principles. NMFS is willing to work with these organizations on a consultative basis to provide assurance that the training is adequate for those individuals interested in participating in the NMFS HACCP-based inspection service. For those who already have practical knowledge of HACCP or who have attended industry-sponsored HACCP training courses, NMFS is developing an examination that will determine whether the individual is sufficiently knowledgeable in HACCP principles. Specifics related to the frequency and cost of testing will be developed based on the level of inquiries.

Impact on Current Participants

The HACCP-based inspection service is available to any current participant. The traditional "continuous" inspection service will remain available.

However, since the HACCP-based service is most closely related to the IQA program, participants in the IQA program will be required to convert to the HACCP-based service within 1 year of the publication date of this notice, if they wish to continue with a less than continuous inspection service.

Future Notices

As experience is gained in the HACCP-based service, further review and modification may be undertaken with due notice to NMFS inspection service users and other interested parties.

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary of Commerce for Oceans and Atmosphere has determined that this action is not a "major rule"

requiring preparation of a regulatory impact analysis under E.O. 12291. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices; nor will it have a significant adverse effect on competition, employment, investment, productivity or innovation.

This action contains a collection-of-information requirement for purposes of the Paperwork Reduction Act. A request for a collection of information has been submitted to the Office of Management and Budget for approval.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 260

Food grades and standards, Food labeling, Seafood.

Dated: July 23, 1992.

Samuel W. McKeen,

Acting Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-17894 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

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

ACTION: Closure of the drift gillnet fishery.

SUMMARY: The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 23, 1992. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATES: Closure is effective 1200 hours local time July 23, 1992, through 2359 hours local time December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule effective December 10, 1991 (56 FR 65007, December 13, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. A quota of 40,785 pounds (18,500 kilograms) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31.

Approximately 32,000 pounds (14,515 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1992. NMFS estimated that 15 drift gillnet vessels would begin fishing on or about July 1, 1992. Based on the number of vessels that would fish and recent average catch per set of approximately 1,570 pounds (712 kilograms) for the month of July, NMFS determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, would be reached on or before July 8, 1992. Hence, the drift gillnet fishery for Atlantic swordfish was closed effective 0001 hours local time July 8, 1992.

After receiving the actual catch data, NMFS determined that approximately 19,000 pounds (8,626 kilograms) remained unharvested. Because this was an unusual circumstance in that about 20 percent of the total quota remains unharvested, NMFS determined that it was appropriate to reopen, with conditions to assure that the quota was not overrun. Reports from the vessels fishing indicate that the quota will be reached on July 23, 1992; therefore the drift gillnet fishery for Atlantic swordfish is closed effective 1200 hours local time July 23, 1992, through 2359 hours local time December 31, 1992. Vessels must report to Pat Gerrior at 508-548-5123 ext. 291 or Dick Stone at 301-713-2347 by 1200 hours (noon) local time on July 23, 1992, that they have ceased fishing, total number of swordfish on board, estimated total dressed weight, and port of arrival. Vessels must be in port by 1200 hours (noon) on July 24, 1992.

During this closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude; and (3) may not land more than two swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is authorized by 50 CFR 630.26 and complies with E.O. 12291.

(Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*)

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 23, 1992.

Richard Schaefer,

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

[FR Doc. 92-17844 Filed 7-23-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-90-301]

RIN 0581-AA73

Kiwifruit; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action will withdraw the proposed rule to revise the United States Standards for Grades of Kiwifruit. Comments received in response to the notice of proposed rulemaking do not support the proposed changes.

DATES: This withdrawal is effective July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. (202) 720-2185.

SUPPLEMENTARY INFORMATION: In September 1990, the Kiwifruit Administrative Committee (KAC), the marketing order committee under the Federal marketing order for kiwifruit grown in California, requested the Agricultural Marketing Service (AMS) to revise U.S. Standards for Grades of Kiwifruit, 7 CFR part 51, §§ 51.2335 through 51.2341. The KAC recommended three specific changes to the standard.

The first change was in reference to § 51.2340 Classification of Defects, specifically Discoloration. Kiwifruit has two basic types of discoloration, black sooty mold and alligator skin. The proposed change would have defined alligator skin as a defect, separating it from other types of discoloration. Black sooty mold would then have been the primary form of discoloration, with tighter tolerances for this defect. The recommended change also involved the definition of "Mature" under § 51.2339. The current standard defines "mature" as the point in the ripening process at which "the fruit has reached the stage of development which will ensure the proper completion of the ripening process." It also requires "the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent." The KAC requested that the soluble solids requirement be deleted from the definition.

The proposed rule was published in the **Federal Register** on Wednesday, December 18, 1991 (Vol. 56, No. 243, pages 65688-65691). The amount period ended February 18, 1992. A total of 27 comments were received by AMS. Twenty of these comments from growers, packers, shippers, and a broker were completely against all aspects of the proposal.

Although there were no specific references among the comments concerning the segregation of alligator skin from other types of discoloration, there were many adverse comments about the relative costs and benefits of the proposed tighter restrictions applied to black sooty mold. Many comments were also made about removing the soluble solids requirement from the maturity definition. Most respondents addressing this issue opposed deleting the present test without replacing it with another.

Four responses were completely in favor of the proposal as written. The responses were from brokers, wholesalers, or receivers. There were no growers who commented in favor of the proposed changes.

Three respondents, a grower, the New Zealand Marketing Board, and the KAC, were in favor of the proposal only on a conditional basis. The New Zealand Marketing Board was in favor of both changes proposed to the discoloration section but not the elimination of the soluble solids requirement for maturity. The KAC and a grower were in favor of the changes concerning alligator skin and the soluble solids requirement but opposed the change concerning black sooty mold.

As the record does not support the proposed changes, the Agency is withdrawing the proposed rule. The Department expects that issues raised in the proposed rule will continue to be discussed by those who buy and sell kiwifruit, and is prepared to assist interested parties in examining these issues.

In consideration of the foregoing, the proposed rule published in the **Federal Register** (Vol. 56, No. 243, pages 65688-65691) on December 18, 1991 is hereby withdrawn.

Dated: July 23, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-17882 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A proposed rule was published in the **Federal Register** on December 2, 1991 (56 FR 61191), which sets forth regulations to implement the provisions of part VII of subtitle B of title III of the Agriculture Adjustment of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), with respect to marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for fiscal years 1992 through 1996.

Subsequent to publication of this proposed rule in the **Federal Register**, section III of the Food, Agriculture, Conservation and Trade Act Amendments of 1990 (technical corrections) substantially amended pertinent sections of the 1990 Act with respect to marketing allotments. Also, proposed procedures for allocating allotments for crystalline fructose, were not in the published proposed rule.

Accordingly, the proposed rule is withdrawn. Another proposed rule will be published in the near future to set forth regulations with respect to marketing allotments which will include changes made by the technical corrections as well as other additions to the proposal deemed necessary.

FOR FURTHER INFORMATION CONTACT: Robert Barry, Director, Sugar Analysis Division, USDA, ASCS, room 3730-S,

P.O. Box 2415, Washington, DC 20013 or call 202–720–3391.

SUPPLEMENTARY INFORMATION: The proposed rule provided a 60–day comment period which ended on February 3, 1992. Twenty–three comments were received. These comments will be taken into consideration along with those received in response to the reproposal of this proposed rule.

Signed July 23, 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–17883 Filed 7–28–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–41–AD]

Airworthiness Directives; L'Hotellier Quick Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) has received reports of failures of L'Hotellier quick connectors that are installed on certain aircraft (primarily gliders and sailplanes). These connectors allow the operator of the aircraft to quickly connect and disconnect the aircraft control systems during assembly and disassembly for storage purposes. The reports reveal that these connectors are inadvertently becoming disconnected, which could result in loss of control of the aircraft if it occurred in flight. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to be taken in order to correct this potential problem. All comments and ideas will be evaluated by the FAA. The FAA will then continue to research and evaluate the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before November 13, 1992.

ADDRESSES: Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–41–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. Information related to this notice can be examined at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chalpin, Program Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

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 Rules 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 any rulemaking action is proposed. After consideration of the available data and comments, a notice of proposed rulemaking (NPRM) will be issued if it is determined that it is in the public interest to proceed with regulatory action. 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–41–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of failures of L'Hotellier quick connectors that are installed on certain aircraft. These ball and swivel joint connectors allow the operator of the aircraft to quickly connect and disconnect the aircraft control systems during assembly and disassembly for storage purposes. These L'Hotellier quick connectors are utilized on, but not limited to, the following aircraft:

- All Glaser-Dirks Models 100, 200 and 400 sailplanes
- All Grob Model gliders
- All Schempp-Hirth Model sailplanes
- All Alexander Schleicher Model gliders; and
- All Lempke Schneider Model gliders

The reports reveal that these connectors are inadvertently becoming disconnected, which could result in loss of control of the aircraft if it occurred in flight. The installation of an optional spring pin is recommended during assembly to assure a positive lock. The FAA has determined that there could be several reasons for the referenced failures. Among these include the lack of preflight check procedures, improper assembly, and inadequate inspection and maintenance requirements.

The FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct this problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. Which sailplanes or gliders do you normally fly?

a. How many L'Hotellier quick connectors are installed?

b. In which control systems are these connectors installed?

2. Have you ever had a L'Hotellier quick connector disconnect in flight?

a. If so, what was the result?

b. Was the safety pin installed?

3. Elaborate on the difficulty of connecting these L'Hotellier quick connectors?

4. Is the connector/connection readily visible when performing the connection operation?

5. Explain any problems in determining whether the joint is properly fastened.

6. Comment on the feasibility of inspecting the safety pin guide hole to determine if the connection is fully mated.

7. Have you installed the safety pin on the connectors and what is your opinion of the effectiveness of these pins?

8. Explain any problems when installing the safety pin.

9. Do you have to replace the L'Hotellier quick connectors more often

than you feel is necessary because of excessive wear?

10. Is there a notation in the sailplane maintenance record as to when:

a. The last three inspections of the L'Hotellier quick connector were made?

b. The last time the L'Hotellier quick connector was cleaned and lubricated?

11. Comment on the adequacy of the procedures contained in the maintenance manual as to how to inspect and maintain the L'Hotellier quick connectors.

12. Please provide the replacement history of any L'Hotellier quick connectors (or any part) by providing:

a. Which connector(s) have been replaced.

b. When each connector was replaced; provide in number of hours time-in-service, landings, or assemblies and disassemblies.

13. Provide any additional information that you feel would help in preventing failures of L'Hotellier quick connectors.

14. Have you received any information relating to this topic through safety seminars, public information classes, or any other general information programs? If so, please share the view, ideas and incidents you received and what you think to be the most important.

Issued in Kansas City, Missouri on July 22, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17904 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization—Portland, ME

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations by updating the list of Customs stations under the jurisdiction of the district director, Portland, Maine. Customs proposes to remove from the list the station at Knoxford Line (Mars Hill), no longer in operation, and add the stations at Daaquam, Estcourt, Ste. Aurelie and St. Pamphile, which are operational but unlisted.

DATES: Comments must be received on or before September 28, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Peg Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better services to carriers, importers, and the public, Customs is proposing to amend the list of Customs stations contained in § 101.4(c), Customs Regulations (19 CFR 101.4(c)). The list shows a station located at Knoxford Line (Mars Hill), under the jurisdiction of the district director, Portland, Maine. The building at this location was demolished many years ago, and the road that the station was located on now serves no useful purpose. Inasmuch as the station at Knoxford Line (Mars Hill) is no longer operational, Customs is proposing to remove this station from its list of Customs stations. By contrast, four locations which primarily service woodcutting operations in the area are operational and manned. Customs is proposing that these four locations be added to the list of Customs stations, under the supervision of the district director, Portland. The stations are located at Ste. Aurelie, Daaquam, St. Pamphile and Estcourt, Maine.

Comments

Prior to adoption of this proposal, consideration will be given to any written comments timely submitted to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act 5 U.S.C. 552, § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291 and Regulatory Flexibility Act

In that the proposed amendment relates to agency organization and management, it is not subject to E.O. 12291. Likewise, although Customs is hereby soliciting public comments, no notice of proposed rulemaking in this regard is required pursuant to 5 U.S.C. 553(a)(2). Accordingly, the proposed amendment is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, it is asserted that the proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities to the extend contemplated by that Act.

Drafting Information

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

List of Subjects in 19 CFR Part 101

Customs duties and inspections, Exports, Imports, Organizations and functions (Government agencies).

Proposed Amendment

It is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66,1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.4 [Amended]

2. It is proposed to amend § 101.4(c), Customs Regulations (19 CFR 101.4(c)), by removing "Knoxford Line (Mars Hill) * * * Bridgewater" from the columns headed, respectively, "Customs stations" and "Port of entry having supervision" for the Portland, Maine District, and inserting in appropriate alphabetical order under these column headings the following four Customs stations and corresponding ports of entry having supervision: "Daaquam, Maine * * * Jackman"; "Estcourt, Maine * * * Fort Kent"; "Ste. Aurelie, Maine * * * Jackman"; and "St. Pamphile, Maine * * * Jackman".

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17758 Filed 7-28-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 101 and 102

Customs Service Field Organization Santa Teresa, NM

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

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field organization by establishing Santa Teresa, New Mexico, as a port of entry. The document also proposes to establish the Santa Teresa Airport, which is within the boundaries of the proposed port of entry, as a designated airport for the purposes of report of arrival and Customs clearance. Currently, Santa Teresa is a temporary Customs station, and the former user fee airport is operating as a landing rights airport. Because of the traffic in the area which already exists, and the anticipated growth in that traffic, Customs has determined that a need exists to create a port of entry at Santa Teresa. Through this proposed change, the general public and importers will be served better and Customs personnel and resources will be more efficiently utilized.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 566–8157.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by establishing a port of entry at Santa Teresa, New Mexico. The airport at Santa Teresa which recently lost its status as a user fee airport by operation of law, is now operating as a landing rights airport. As an interim measure, Customs has established a temporary Customs station at Santa Teresa under authority of § 101.4(d). However, analysis of the traffic in the area indicates that the activity in the Santa Teresa area will soon meet the minimum criteria for the establishment of a port of entry. The criteria for determining whether a port of entry should be established by Customs was initially identified in T.D. 82–37 on March 9, 1982 (47 FR 10137). The criteria in that T.D. was subsequently revised by T.D. 86–14 (February 5, 1986, 51 FR 4559) and T.D. 87–65 (May 4, 1987, 52 FR 16328).

The criteria used by Customs in determining whether the creation of a port of entry are whether the community requesting creation of the port can: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); and (3) have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius). In addition, T.D. 82–37 provides that the "actual or potential Customs workload (minimum number of transactions per year)" must meet one of several alternate criteria, one of which is "2,500 consumption entries." Finally, T.D. 82–37 provides that the facilities at the location must include adequate warehousing space for secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The Regional Commissioner of the Southwest Region has reported to Customs Headquarters that the Santa Teresa area is well served by air, rail, and highway modes of transportation. The population within a 70-mile radius of the proposed port is contained in a variety of jurisdictional units and communities. Both El Paso, Texas and Juarez, Mexico are within that radius, as are several smaller communities. The 1990 El Paso County estimated population was over 606,000, while Dona Ana County, New Mexico added another 15,000. The estimated 1990 population of Juarez, Mexico is 1.2 million. All these figures are expected to grow significantly in the coming years. Creation of a port of entry at Santa Teresa will more evenly distribute the vehicular traffic which is currently forced to pass through El Paso, Texas. There is significant construction taking place in and around the vicinity of the proposed port of entry of Santa Teresa to build inspection booths and stations, administration buildings and other support facilities to allow Customs to perform its mission in a safe and efficient manner. Customs has received commitments from several corporate importers that they will utilize Santa Teresa as a port of entry once it becomes operational. Studies conducted by several sources have indicated that, once the port becomes operational, over 25,000 commercial vehicles will use the port per year, and approximately 6,000 consumption entries will be filed per year.

Currently, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the State. Diplomatic negotiations have been held with the Government of Mexico concerning the creation of a port of entry at Santa Teresa, and both governments are in agreement with such an action.

Customs is also proposing to amend § 122.24(b) by adding the Santa Teresa Airport to the list of airports designated as airports at which private aircraft arriving in the Continental U.S. must report intended arrival pursuant to § 122.23(b) and land for Customs processing in accordance with § 122.24(b). Section 122.23 provides, in relevant part, that: "All private aircraft arriving in the Continental U.S. via the U.S.-Mexico border * * * from a foreign place in the Western Hemisphere south of 33 degrees north latitude, * * * from any place in Mexico, * * * shall furnish notice of intended arrival to Customs at the nearest designated airport to the point of crossing * * * for the first landing in the U.S." Section 122.24 provides that such aircraft "shall land for Customs processing at the nearest designated airport to the border or coastline crossing point * * *." At present, there is no designated airport in the State of New Mexico. By identifying the Santa Teresa Airport as a designated airport, Customs will benefit the flying public by increasing the options available for reporting arrival and obtaining Customs processing. The addition of this airport will also reduce delays at existing designated airports by permitting a better distribution of the inspection burden.

The proposed boundaries of the port of entry of Santa Teresa are as follows:

Beginning at the junction of the boundary between Texas and New Mexico with the U.S.-Mexico border, west, along the Mexico-U.S. border until it intersects the range line between Range 1 East and Range 2 East, New Mexico Principal Meridian; at that point, north along that range line until it reaches the line between Township 27 South and Township 28 South; then east along the Township line until it reaches the Texas-New Mexico border; then southeast along the Texas-New Mexico border to the beginning point.

If the proposed boundaries of the port are adopted, the lists of Customs

regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly. The listing of user fee airports in 19 CFR 122.39(b) will be amended to delete the Santa Teresa Airport, and the listing of designated airports in 19 CFR 122.24(b) will be amended to include the Santa Teresa Airport.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: These changes are proposed under the authority of 5 U.S.C. 301, 19 U.S.C. 2, 55b, 66, 1433, 1436, 1459, 1590, 1623, 1624, 1644 and 49 U.S.C. App. 1509.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

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

Michael H. Lane,

Acting Commissioner of Customs.

Approval: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17757 Filed 7-28-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 142

Identifying Information Required on Entry Documents

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Clarification.

SUMMARY: This document sets forth proposed examples indicating the party in the U.S. to whom imported merchandise is sold or consigned, or the premises in the U.S. to which it is delivered, which party or premises must be identified in the Customs entry or release documents covering the merchandise.

DATE: Comments must be received on or before September 28, 1992.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1310 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Kelley, Office of Cargo Enforcement and Facilitation, (202)-566-5354.

SUPPLEMENTARY INFORMATION:

Background

Merchandise imported and entered for consumption must be supported by Customs entry and entry summary documentation. Briefly stated, this entry documentation is detailed in § 142.3, Customs Regulations (19 CFR 142.3), and consists of the information which must be filed with Customs to secure the release of imported merchandise from Customs custody (19 CFR 141.0a(a)); entry summary documentation is that which must be filed in order to enable Customs to assess duties, and collect statistics with respect to the merchandise, and to determine whether other requirements of law or regulation are met (19 CFR 141.0a(b)).

In addition, in certain circumstances as enumerated in § 142.21, Customs Regulations (19 CFR 142.21), merchandise may be initially released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), and in these circumstances as well, the information required by § 142.3 must be provided, except that a commercial invoice need not be submitted at such time (see 19 CFR 142.22(a)).

Customs capability to identify fully all parties involved with imported merchandise being entered or released is essential in order to support investigative efficiency. Information concerning the party in the U.S. to whom such merchandise is sold or consigned represents one of several elements which Customs considers in the process of assessing the risks associated with the transaction and determining the appropriate level of examination to be accorded the merchandise involved. This process is know generally as "cargo selectivity".

In this latter regard, principally to correct a problem on the Northern Border, § 142.3 was amended by T. D. 90-92, 55 FR 49879, to add a new paragraph (a)(6), in order to specifically require that entry or release documents include the identity of the party in the U.S. to whom the imported merchandise is sold or consigned, or if this is unknown at the time of entry or release, the premises in the U.S. to which the merchandise is delivered. Section 142.3(a)(6) reads as follows:

> When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person as provided in § 24.5 of this chapter, shall be shown on the entry documents (CF 3461, 3461 ALT, 7501). When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

Under § 142.3(a)(6), the required information, including the appropriate identification number or numbers, must be provided for each entry of imported merchandise processed through cargo selectivity, whether the entry is electronically or manually transmitted to Customs.

In particular, for a consolidated entry, where the entry is made listing one broker or freight forwarder as consignee, the required information must be submitted for each separate and distinct shipment within the consolidated shipment.

The notice of proposed rulemaking which led to the final rule adopting § 142.3(a)(6) set forth seven examples which were designed and intended to illustrate the application of the identification requirement contained in this regulation (55 FR 2528, 2529). These examples, however, were dropped from the final rule because they created confusion on the part of the brokerage community as to which party should be identified in some of the more complex import transactions (T.D. 90-92, 55 FR 49879, 49883). However, it was stated in the final rule that examples "meeting the needs of both Customs and the trade

[would] be developed and issued separately" (*ibid.*).

Accordingly, Customs has since worked with the trade community in an effort to develop a new series of examples, set forth below, that are believed to be more consistent with the identification requirements of § 142.3(a)(6), and which identify the correct party or premises in the U.S., that must be shown on the Customs entry or release documents in the most frequently encountered import transactions. The address of the party in the U.S. to whom imported merchandise is sold or consigned must, of course, be located within the U.S.

Examples

Example 1. ABC Company, a distributor of telephone equipment located in Seattle, Washington, places an order with Canadian Bell Limited of Vancouver, Canada, and arranges for the importing carrier to deliver the goods directly to several customers of ABC Company in the U.S.

ABC Company is the ultimate consignee for Customs purposes, since that is the party which purchased the merchandise from the Canadian shipper.

Example 2. XYZ Limited is a Canadian company which produces and delivers baked goods to twenty retail food stores in the U.S. on a daily basis.

Since the baked goods are ordered/purchased separately from the Canadian supplier by the individual stores in the U.S., each of these stores is the ultimate consignee for Customs purposes.

Example 3. Montreal Furniture Company, a Canadian manufacturer of office furniture, leases storage space at the Champlain Warehouse Service in Champlain, New York. As orders are received from customers in the U.S., delivery is made from the Champlain storage facility.

The Champlain Warehouse Service should be shown on the entry or release documents in accordance with § 142.3(a)(6), since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered.

Example 4. Calgary Instruments Limited ships a small parcel containing a medical instrument to the UPS (United Parcel Service) hub in Sweetgrass, Montana, for subsequent delivery to Memorial Hospital in Great Falls, Montana. Reliable Broker is the importer of record for this shipment.

Memorial Hospital is the ultimate consignee for this shipment, since it is the purchasing party, and UPS is merely a nominal consignee in the transaction.

Example 5. An employee of Ontario Jewelry Sales Limited of Mississauga, Canada, imports in her personal baggage a collection of diamonds for display and possible sale at a jewelry exhibition taking place at the Intercontinental Hotel in Manhattan, New York.

As in Example 4, since this shipment is not being imported subject to a contract of purchase or delivery at the time of importation, the Intercontinental Hotel should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place to which the diamonds are being delivered.

Example 6. The Wilkins Fur Company, Limited, of Toronto, ships twenty mink coats to the Williamson Exposition Company of Boston, which is handling the arrangements for a trade fair on behalf of the National Association of Fur Garment Wholesalers to be held at the Plaza Hotel in New York City.

Since there is no known buyer at the time of importation of the mink coats, the Williamson Exposition Company of Boston should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the entity to which the coats are consigned.

Example 7. Manitoba Auto Supply of Winnipeg ships ignition kits to the U.S. The buyer shown on the invoice is Minneapolis Auto Specialties of 2800 Hennepin, Minneapolis, Minnesota. Marty's Car Parts in Racine, Wisconsin, is shown as the "ship to" party.

As in Example 1, the ultimate consignee for Customs purposes is Minneapolis Auto Specialties, since that is the party which purchased the merchandise from the Canadian shipper.

Example 8. Manitoba Auto Supply ships ignition kits to Minneapolis Auto Specialties in Duluth, Minnesota. The buyer shown on the invoice is Minneapolis Auto Specialties located at 2800 Hennepin in Minneapolis, Minnesota.

As in Example 7, Minneapolis Auto Specialties in Minneapolis is the ultimate consignee since that is the party in the U.S. which purchased the merchandise.

Example 9. Acme Compressor Company, Limited, of Edmonton, Alberta, buys an air compressor from the Trucking Supply Company of Regina, Saskatchewan, and is listed as the buyer on the invoice. Acme shops the compressor to the Lindquist Trucking Company in Ambrose, North Dakota.

The Lindquist Trucking Company should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place in the U.S. to which the goods are being delivered.

Example 10. Strong-as-Nails Steel Company of Dorval, Quebec, ships a load of steel to U.S. Steel in Allentown, Pennsylvania. On the Special Summary Steel Invoice (Customs Form 5520), U.S. Steel is listed as the importer in Block #8. The buyer of the steel listed in Block #7 is Structures Unlimited of Philadelphia, Pennsylvania.

As in Example 1, the ultimate consignee is Structures Unlimited as it is the U.S. buyer of the steel.

Example 11. Beauty Limited of Montreal, Quebec, sells a shipment of cosmetics to Total Woman, Inc. (a U.S. company) in care of (c/o) Unique Image of Albany, New York. There is no address listed on the invoice for the buyer, Total Woman, Inc.

The ultimate consignee in this case is Total Woman, Inc., which is the buyer in this transaction. Its name and address must therefore be included on the Customs entry or release documents.

Example 12. Spring Water Company of Los Angeles purchases a load of bottled water from Healthy Water Limited of Calgary, Alberta. The address of Spring Water Company is listed as a post office box in Los Angeles. The water is shipped to Ralph's Grocery Store on Sepulveda Boulevard in Los Angeles.

The ultimate consignee is Spring Water Company of Los Angeles as the U.S. buyer of the water, regardless of the fact that its address shows a post office box.

Example 13. FTX Company in Mexico City ships a load of door knobs to the Rio Company in El Paso, Texas. There are no other parties located in the U.S. shown on the invoice.

The Rio Company should be shown on the entry or release documents in accordance with § 142.3(a)(6) since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered. However, if there is a known buyer that name must be used.

Example 14. ABC Garments of Edmonton, Alberta, manufactures children's clothing and sells to small boutiques in the U.S. These boutiques place orders (usually small) with ABC Garments which will accumulate a number of orders before sending them as a consolidated shipment with their customhouse broker listed as consignee.

Although § 141.51, Customs Regulations (19 CFR 151.51), allows all merchandise arriving on one vessel and consigned to one consignee (in this case, the broker) to be included in one entry,

the ultimate consignee (*i.e.*, the person to whom the merchandise is sold) for each shipment in the consolidated entry must be provided to Customs in accordance with §§ 141.86(a)(2) and 142.3(a)(6), Customs Regulations (19 CFR 141.86(a)(2) and 142.3(a)(6)). Furthermore, pursuant to §§ 24.5(a) and 142.3(a)(6), Customs Regulations (19 CFR 24.5(a) and 142.3(a)(6)), a Customs Form 5106 would also have to be filed for each ultimate consignee for which entry is made.

Example 15. Through Quicksilver Delivery, an international courier company, Just Fabrics, Limited, of Montreal, ships a parcel of fabric cuttings to Dresses-Are-Us in London, England. Dresses-Are-Us is listed as the destination party on the invoice. After Customs clearance, the parcel is forwarded to England by A–1 Freight Forwarders of Buffalo, New York.

Because there is no known buyer in the U.S., A–1 Freight Forwarders in Buffalo, New York, should be shown on the entry or release documents in accordance with § 142.3(a)(6), since theirs are the premises in the U.S. to which the merchandise is to be delivered before being forwarded to England.

Example 16. Top Hat Ltd., ships twenty orders of clothing accessories on individual bills of lading to various consignees. The entire shipment is included on a master bill of lading designating a customs broker as consignee.

One entry would be filed in this situation in accordance with § 141.51, Customs Regulations (19 CFR 141.51). Although the broker listed as consignee on the master bill of lading may be the importer of record, tariff-line items would designate the individual ultimate consignees. Ultimately, all twenty ultimate consignees would be listed on the entry. Some line items may be repeated for more than one ultimate consignee.

Comments

Consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Drafting Information

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

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–17759 Filed 7–28–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Registration of Mid-Level Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: The DEA proposes to amend its regulations by defining the term mid-level practitioner (MLP) in part 1304. Concurrent with the establishment of this definition, DEA will establish a new category of registration, MLP, under which advanced practice nurses, physician assistants, and others will receive individual DEA registrations granting controlled substances privileges consistent with the authority granted them by the state.

To implement this new category of registration, DEA also proposes to amend part 1304 to allow DEA to inspect and copy a MLP's practice agreement, guideline, protocol or other state required documents which describe the conditions of his/her authority to dispense controlled substances; and to clarify the exemption from the registration requirement of institutional practitioners and agents of other DEA registrants and the authority of MLPs to conduct research as a coincident activity in part 1301.

DATES: Written comments and objections must be received on or before September 28, 1992.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

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

SUPPLEMENTARY INFORMATION: The Controlled Substances Act of 1970 (CSA) established a closed system of distribution of pharmaceutical controlled substances to both ensure their availability for legitimate medical purposes and to prevent their diversion to illicit use. The registration by DEA of all manufacturers, distributors and dispensers of controlled substances is the foundation of this closed system.

When the CSA was enacted, state authority to dispense controlled substances was granted only to selected traditional medical disciplines which had broad authority to diagnose and determine treatment. [Note: the term dispense means to deliver a controlled substance to the ultimate user, including by administration or prescription.] DEA's system of registration was designed to allow a corresponding authority, including the ability to independently purchase, store, and dispense controlled substances. Pharmacists or wholesalers could expect, with a reasonable degree of certainty, that a registered practitioner issuing a prescription or ordering controlled substances was authorized by both DEA and the state to engage in such activities.

The evolution of advanced practice nurses and physician assistants as primary health care providers authorized to dispense controlled substances, makes the historical, operational process of the DEA registration system inconsistent with current authorized practices. The original system of practitioner registration did not anticipate a class of practitioners with such widely disparate authority. Some states have granted MLPs authority to dispense controlled substances without the oversight and approval of a traditional practitioner, while other states have granted a more restricted controlled substance dispensing authority. For example, in some states, the collaborating physician may establish the MLP's specific controlled substance dispensing authority. Thus, modifications to the DEA registration system are necessary to permit a supplier or pharmacist to distinguish between classes of registrants which may be subject to restricted state authority and traditional registrants with broad authority.

On February 4, 1991 (56 FR 4181), DEA proposed that advanced practice nurses, physician assistants and others, then defined as affiliated practitioners, be allowed to prescribe controlled substances utilizing the DEA registration

number, with a unique suffix, of their collaborating physician. DEA has since determined that the procedure could not adequately address the unique practices of these health care professionals. The proposal was subsequently withdrawn on April 24, 1992 (57 FR 15037).

DEA now proposes to amend part 1304 to define MLP as an individual practitioner other than a physician, dentist, osteopath, veterinarian, ophthalmologist or podiatrist, who is licensed, registered or otherwise permitted in the United States or the jurisdiction in which he/she practices to dispense a controlled substance in the course of professional practice as a primary health care provider.

Based on the new definition, DEA will create a separate registration category for MLPs. The procedures used under this system will parallel those which have been used with traditional practitioner registrations. Upon application, each qualified MLP will be issued an individual DEA registration to dispense controlled substances to the extent that the registrant is authorized to dispense controlled substances by the state in which he/she will practice. The administrative structure of the number will identify the registrant as a MLP. Applicants will certify on their applications for registration and reregistration the controlled substances authority they have been granted by the state, the schedules of controlled substances they may handle, and any other controlled substance restrictions.

Part 1304 will also be amended to require that MLPs maintain a readily available copy of their practice agreement, guideline, protocol, or other documents which describe the conditions of their authorization to dispense controlled substances which are required by the state, and make such items available to DEA upon request for inspection and copying. This will provide DEA details regarding the specific circumstances under which a MLP practices without imposing a burdensome requirement that such documents be submitted with each application for registration or reregistration.

Section 1301.22(b)(6) will be amended to clarify when research is permitted as a coincident activity by registered MLPs, and §§ 1301.24 (b) and (c) will be amended to include MLPs in the registration exemption for practitioners in certain settings. It should be noted that practitioners in institutional settings who issue orders for medication for direct administration to a patient, such as nurse anesthetists in the normal course of their practice, are not prescribing within the meaning the § 1306.02(f), and would be exempt from registration. In that context, DEA neither requires nor encourages registration for MLPs acting as agents of other registrants.

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

Pursuant to sections 3(c)(3) and 3(e)(2)(c) of E.O. 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

This proposed rule responds to the requirements of title 21, United States Code, section 823(f), that DEA registrations must be issued to those persons who are authorized by state authorities to dispense controlled substances, and is essential to the criminal law enforcement function of the United States. Further, Mid-Level Practitioners have expressed a strong interest in being registered by DEA. Accordingly, it is not subject to the moratorium on regulations ordered by the President of the United States.

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

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug Traffic Control, Security measures.

21 CFR Part 1304

Drug Enforcement Administration, Drug Traffic Control, Reporting requirements.

For reasons set out above, it is proposed that 21 CFR parts 1301 and 1304 be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.22 is proposed to be amended by revising paragraph (b)(6) as follows:

§ 1301.22 Separate registration for independent activities.

* * * * *

(b) * * *

(6) A person registered to dispense controlled substances in Schedules II through V shall be authorized to conduct research and to conduct instructional activities with those substances, except that a mid-level practitioner, as defined in § 1304.02(f), may conduct research coincident to his/her practitioner registration only to the extent expressly authorized by state statute.

* * * * *

3. Section 1301.24 is proposed to be amended by revising paragraphs (b) and (c) introductory text to read as follows:

§ 1301.24 Exemption of agents and employees; affiliated practitioners.

* * * * *

(b) An individual practitioner, as defined in § 1304.02 of this chapter (other than an intern, resident, foreign-trained physician, or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government), who is an agent or employee of another practitioner, other than a mid-level practitioner, registered to dispense controlled substances may, when acting in the usual course of his/her employment, administer and dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself. (For example, a staff physician employed by a hospital need not be registered individually to administer and dispense, other than by prescribing, controlled substances within the hospital.)

(c) An individual practitioner, as defined in § 1304.02 of this chapter, who is an intern, resident, mid-level practitioner, foreign-trained physician or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government, may dispense, administer and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom he/she is employed in lieu of

being registered him/herself, provided that:

* * * * *

PART 1304—[AMENDED]

1. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(d), 965, unless otherwise noted.

2. Section 1304.02 is proposed to be amended by redesignating the current paragraphs (f) through (i) as paragraphs (g) through (j) and adding a new paragraph (f) to read as follows:

§ 1304.02 Definitions

* * * * *

(f) The term mid-level practitioner means an individual practitioner (as defined in § 1304.02(d)), other than a physician, dentist, osteopath, veterinarian, ophthalmologist, or podiatrist, who is licensed, registered, or otherwise permitted in the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice. Mid-level practitioners would include state authorized primary health care providers such as nurse practitioners, nurse midwives, nurse anesthetists, and physician assistants.

* * * * *

3. Section 1304.03 is proposed to be amended by redesignating the current paragraphs (e) through (g) as paragraphs (f) through (h), adding a new paragraph (e), and revising new paragraph (h) as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(e) Each registered mid-level practitioner shall maintain in a readily retrievable manner such protocols, practice guidelines, agreements, and other documents required by the state which describe the conditions and extent of his/her authorization to dispense controlled substances and shall make such items available for inspection and copying by authorized employees of the Administration.

* * * * *

(h) Notice required by paragraphs (f) and (g) of this section shall be given at the time the person applies for registration or reregistration and shall be made in the form of an attachment to the application, which shall be filed with the application.

Dated: June 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 92–17873 Filed 7–28–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–264–82]

RIN 1545–AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of the location of public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of location for the public hearing on proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation to a shareholder as well as proposed regulations relating to the treatment of distributions by and S corporation to its shareholders.

DATES: The public hearing will be held on Monday, September 14, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 24, 1992.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–264–82], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–6543, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1367 and 1368 of the Internal Revenue Code. These proposed regulations were published in the **Federal Register** for Tuesday, June 9, 1992 (57 FR 24426).

There has been a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–17831 Filed 7—92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[Notice No. 746]

Change in the Frequency of Filing Reports of Bonded Wine Premises Operations and Wine Excise Tax Returns (92F030P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to reduce administrative burdens on the wine industry by (1) Allowing certain small bonded wine premises proprietors to file reports annually instead of monthly and (2) allowing certain small bonded wine premises proprietors who pay less than $1,000 annually in wine excise tax to file tax returns and pay such tax annually instead of semi-monthly.

DATES: Written comments must be received by August 28, 1992.

ADDRESSES: Send written comments: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 746.

FOR FURTHER INFORMATION CONTACT: James A. Hunt and Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, President Bush announced a regulatory initiative. This initiative called for a review of all existing regulations and programs to identify any which impose substantial costs on the economy. As part of this review, ATF is proposing to (1) Allow certain small winery proprietors to file

their reports of bonded wine premises operations annually instead of monthly and (2) allow certain small bonded wine premises proprietors who pay less than $1,000 annually in wine excise tax to pay such tax annually instead of semi-monthly.

Report of Bonded Wine Premises Operations, ATF F 5120.17

On June 19, 1990, ATF published Treasury Decision ATF–299 (55 FR 24874) which revised and recodified the wine regulations issued under the Internal Revenue Code into a new 27 CFR part 24. As part of the simplification of the wine regulations, proprietors of bonded wine premises who did not expect to have any inventory change or reportable operation in a subsequent month or months could file a statement to that fact and be exempt from filing a monthly report of bonded wine premises operations until the next change in inventory or reportable operation.

ATF is proposing to allow small bonded wine premises proprietors to file their report of bonded wine premises operations annually instead of monthly. The criteria proposed for a small winery proprietor to file an annual report of bonded wine premises operations are based on the size and scope of the winery operations as recorded on each monthly report. Proprietors should note that the criteria of small wine premises for report purposes are not the same as the criteria for a small winery eligible for the wine tax credit under 26 U.S.C. 5041. A bonded wine premises proprietor may submit an annual report of operations if during the previous calendar year none of the reports on ATF 5120.17 exceeded 20,000 gallons when totaling Part I columns (a) through (e) of section A line 12 plus section B line 7, or if a proprietor does not expect to exceed such 20,000 gallon quantity in any month of the current calendar year. These columns represent the opening inventories of bulk and bottled wines in all tax classes, and all operations increasing the amounts to be accounted for during the month, such as production, receipt in bond, and bottling. To begin the annual filing of a report of bonded wine premises operations, a proprietor would state such intent in the "Remarks" section when filing a monthly ATF F 5120.17. If a proprietor determines that the 20,000 gallon quantity will be exceeded in any month, an ATF F 5120.17 will be filed for that month and for all subsequent months of the calendar year. However, if there is a jeopardy to the revenue, the regional director (compliance) may require any proprietor filing reports of bonded wine premises operations annually to file such report monthly.

The major reason for requiring a report of operations is for ATF to determine compliance with Internal Revenue Code wine regulations and specifically, wine excise tax payments. Over 97 percent of this wine excise tax is paid by larger wineries and, as discussed below, many of the smaller wineries are already filing annual tax returns. Experience has shown that our audit approach is adequate to prevent any significant jeopardy to the revenue.

A secondary reason for the report of operations is to provide monthly statistical data to the wine industry and ATF for the purpose of determining industry trends. If these small bonded wine premises proprietors filed their reports of operations annually instead of monthly, the monthly reports of operations received from the larger wineries would still provide most of the data furnished to ATF (over 97 percent). Under the proposed criteria for qualifying, more than 1,000 of the approximately 1,650 bonded wine premises proprietors would file an annual report of operations instead of a monthly report. This would reduce the number of reports filed by over 11,000 and reduce the number of burden hours in preparing and sending monthly reports of operations. Proprietors close to the maximum operational level for annual reporting may still need to spend some time each month ensuring they have not exceeded that level. However, based on the monthly reports now submitted to ATF, most of the bonded wine premises affected by this proposal do not conduct operations close to the 20,000 gallon level.

If this proposal becomes a final rule, ATF Form 5120.17 will be revised accordingly. If ATF F 5120.17 is revised, ATF is proposing to delete Part II, Summary of Domestic Wines in Taxpaid Rooms, from ATF F 5120.17 as an additional reduction in the burden of reporting wine premises operations. This notice of proposed rulemaking also contains conforming changes to the regulations which refer to the form title, Monthly Report of Wine Cellar Operations, and to the monthly reporting requirements.

Increasing the Wine Excise Tax Amount to Qualify for Filing Annual Tax Returns to $1,000

One of the major revisions to Treasury Decision ATF–299 was allowing small winery proprietors paying less than $500 in wine excise tax for the previous calendar year to file tax returns and pay such tax annually instead of semi-monthly for the current calendar year unless and until the wine excise tax liability exceeds $500 for the current year. This revision significantly reduced the number of tax returns required to be filed by proprietors of small wineries. ATF has determined that increasing the amount to $1,000 would allow approximately 100 more wine premises proprietors to file annual tax returns. Such an increase would result in a reduction of approximately 2,300 tax returns being filed. Additionally, about another 100 small winery proprietors would not have to be concerned about reaching their $500 (but not more than $1,000) per year wine excise tax limit and being required to file semi-monthly tax returns the next calendar year. Under the current regulations, up to $500 in excise tax which has been determined but not paid is already covered by the wine operations bond. This amount was increased from $100 when the wine regulations were recodified in 1990. ATF is proposing an increase to $1,000 in the wine bond limit under 27 CFR 24.146(a) for wine on which tax has been determined but not paid in order to allow this new filing option.

Proprietors should be aware that the regulatory increase in the dollar amount of the wine bond available for wine removed from bonded wine premises on which the tax was determined but not paid does not automatically raise this limit on existing bonds. In order to obtain this additional coverage, the proprietor must procure a new bond or a consent of surety expressly providing for the $1000 amount. For example, some proprietors still have wine bonds showing a $100 amount, while other proprietors have increased this amount to $500 as a result of TD–ATF–299. For either of these proprietors to use the proposed option of making a single annual taxpayment of up to $1000, such proprietor must obtain a new bond or consent of surety providing for the $1000 coverage. Otherwise the proprietor is entitled to the annual payment option only up to the amount of $100 or $500, depending on its bond terms.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in:

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

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,

(c) 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because it does not impose any new reporting requirements. This proposal, if implemented, will eliminate some of the reporting and filing requirements applicable to small bonded wine premises proprietors.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine whether a public hearing would be necessary.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal authors of this document are James A. Hunt and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic Fund Transfers, Excise Taxes, Exports, Food Additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling houses, Transportation, Vinegar, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 24—Wine, is amended as followed:

PART 24—WINE

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

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5273, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.65(b) is amended by revising the third sentence to read as follows:

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

* * * * *

(b) * * * Any other claim for allowance of loss will be attached to and submitted with the ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period in which the inventory required by § 24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final report filed. * * *

* * * * *

Par. 3. Sections 24.75(f), 24.136(d) and 24.140(b) are amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 3a. Section 24.136(d) is amended by removing the words "Monthly Report of Bonded Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 4. Section 24.146, paragraphs (a) and (b) are amended by removing the amount "$500" where it appears and adding, in its place, the amount "$1000".

Par. 5. Section 24.148 is amended by removing the amount "$500" from the two locations where it appears in the chart and adding, in its place, the amount "$1000".

Par. 6. Section 24.176 is amended by revising the last two sentences to read as follows:

§ 24.176 Crushing and fermentation.

* * * Upon completion of fermentation or removal from the fermenter, the volume of wine will be accurately determined, recorded and reported on ATF F 5120.17, Report of Bonded Wine Premises Operations, as wine produced. Any wine or juice remaining in fermentation tanks at the end of the reporting period will be recorded and reported on ATF F 5120.17.

* * * * *

Par. 7. Section 24.197 is amended by revising the last sentence to read as follows:

§ 24.197 Production by fermentation.

* * * The quantity of liquid in fermenters at the close of each reporting period will be reported on the ATF F 5120.17, Report of Bonded Wine Premises Operations.

* * * * *

Par. 8. Section 24.237 is amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 9. Section 24.268 is amended by removing the word "month" and adding, in its place, the words "reporting period".

Par. 10. Section 24.273 is amended by revising paragraph (a) to read as follows:

§ 24.273 Exception to filing semi-monthly tax returns.

(a) Any proprietor who has paid wine excise taxes in an amount less than $1000 during the previous calendar year may file the Excise Tax Return, AFT F 5000.24, and remittance, within 30 days after the end of the calendar year instead of semi-monthly as required by § 24.271. However, if before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from

bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals $1000 or more, the proprietor will commence semi-monthly filing of the wine Excise Tax Returns and making of payments as required by § 24.271.

* * * * *

Par. 11. Section 24.275 is amended by revising paragraph (a)(2) and the first sentence of paragraph (a)(3) to read as follows:

§ 24.275 Prepayment of tax.

(a) * * *

(2) The tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than the amount of such tax covered by the wine operations coverage of the wine bond; or,

(3) There is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds the coverage under the wine operations coverage of the wine bond for wine removed from bonded wine premises on which tax has been determined but not paid. * * *

* * * * *

Par. 12. Sections 24.292(b) and 24.293(b) are amended by removing the words "Monthly Report of Wine Cellar Operations for the month" and adding, in their place, the words "Report of Bonded Win Premises Operations for the reporting period".

Par. 13. Section 24.294(b) is amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 14. Section 24.295(b) is amended by removing the words "Monthly Report of Wine Cellar Operations for the month" and adding, in their place, the words "Report of Bonded Wine Premises Operations for the reporting period".

Par. 15. Section 24.300 is amended by revising the last sentence of paragraph (b) and by revising paragraph (g) to read as follows:

§ 24.300 General.

* * * * *

(b) * * * Source records and supplemental or auxiliary records may be used as a record of an operation or transaction and to prepare the ATF F 5120.17, Report of Bonded Wine Premises Operations, provided the record will readily allow for verification of an operation or transaction by ATF officers.

* * * * *

(g) *ATF F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations will summarize transaction entries and submit an ATF F 5120.17 to the regional director (compliance) on a monthly basis, except that:

(1) A proprietor who files a monthly ATF F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months, may attach a statement to the next report filed that, until a change in the inventory or a reportable operation occurs, an ATF F 5120.17 will not be filed.

(2) A proprietor who filed monthly ATF F 5120.17 reports during the previous calendar year and none of the reports exceeded 20,000 gallons when totaling Part I columns (a) through (e) of section A line 12 plus section B line 7, or a proprietor who does not expect to exceed such 20,000 gallon quantity in any month during the current calendar year, may file an annual instead of a monthly ATF F 5120.17. To begin the annual filing of a report of bonded wine premises operations, a proprietor will state such intent in the "Remarks" section when filing a monthly ATF F 5120.17. If a proprietor determines that the 20,000 gallon quantity will be exceeded in any month, an ATF F 5120.17 will be filed for that month and for all subsequent months of the calendar year. If there is a jeopardy to the revenue, the regional director (compliance) may at any time require any proprietor filing a report of bonded wine premises operations annually to start filing such report monthly. The information reported on an ATF F 5120.17 will be maintained in accordance with the requirements of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5555))

* * * * *

Par. 16. Section 24.303 is amended by revising paragraph (d) to read as follows:

§ 24.303 Formula wine record.

* * * * *

(d) The volume produced and the gain or loss resulting from the production of each lot as determined by comparing the volume finished with the volume used (report the total loss or gain on the ATF F 5120.17 for the period in question);

* * * * *

Par. 17. Section 24.313 is amended by revising the third and fourth sentences of the introductory text to read as follows:

§ 24.313 Inventory record.

* * * The inventory record will be retained on file with the proprietor's ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period when the inventory was taken. If at other times a complete inventory of all wine is taken, losses disclosed will be reported on the ATF F 5120.17 and the inventory record will also be maintained on file with the report for that period. * * *

* * * * *

Par. 18. Section 24.316 is amended by revising the last sentence to read as follows:

§ 24.316 Spirits record.

* * * The proof gallons of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each reporting period and reported on the ATF F 5120.17.

* * * * *

Par. 19. Section 24.317 is amended by revising the last sentence to read as follows:

§ 24.317 Sugar record.

* * * At the close of each reporting period, the account will be balanced and the quantity of each kind of sugar remaining on hand will be shown.

* * * * *

Signed: June 12, 1992.

Stephen E. Higgins,

Director.

Approved: July 6, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–1780 Filed 7–28–92; 8:45 am]

BILLING CODE 4810–31–92

Fiscal Service

31 CFR Part 357

[Department Of The Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Fiscal Service, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends until March 8, 1993, the deadline for submission of comments on the proposed rule to govern Treasury bonds, notes, and bills ("securities") held in the commercial book-entry system, also known as the Treasury/Reserve Automated Debt Entry System, or Trades. The proposed rule was published in the **Federal Register** on April 9, 1992 (57 FR 12244), as corrected by a notice published on May 13, 1992 (57 FR 20572). Comments were to have been submitted on or before September 8, 1992.

DATES: Comments must be received on or before March 8, 1993.

ADDRESSES: Comments should be sent to: Office of the Chief Counsel, Bureau of the Public Debt, room 503, E Street Building, Washington, DC 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel (202) 219–3320, or Cynthia Reese, Deputy Chief Counsel (202) 219–3320.

SUPPLEMENTARY INFORMATION: The Department has received a request from twenty-three members of the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association, to extend the period for submission of comments on the proposed regulations for six months. The extension has been requested in view of the current progress being made to revise Article 8 of the Uniform Commercial Code. This group believes that "if sufficient attention can be directed to achieving consensus with respect to the rules that will govern securities transactions under a uniform state law, the availability of those rules (even if not in absolutely final form) will prove invaluable to market participants and practitioners alike in providing comments on the form and substance of federal regulation for Treasury securities."

In the "Background" section of the preamble to the proposed rule, as published on April 9, 1992, Treasury noted that a drafting committee of the National Conference of Commissioners on Uniform State Laws had been formed to revise Article 8 of the Uniform Commercial Code, and was in the process of addressing some of the same issues presented in the proposed regulations. Treasury also expressed the view that ultimately it would be desirable, to the extent possible, to have the same law apply to U.S. Treasury securities as applies to other securities. To this end, and to be able to consider its rule in the light of the examination of this area of the law being provided by experts and other interested persons, Treasury has decided to extend the comment period on the proposed rule to March 8, 1993. Commenters who are able to do so are encouraged to submit their comment letters before that date.

Dated: July 22, 1992.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 92–17767 Filed 7–28–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AF87

Health Professionals Educational Assistance Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The VA (Department of Veterans Affairs) proposes to amend its Medical Regulations by adding new sections to implement the provisions of Public Law 101–366. Section 205 of that law creates the "Stipend Program for Members of the Selected Reserve" (herein after referred to as "Stipend Program"), codified at 38 U.S.C., chapter 76, subchapter V.

The existing VA Health Professional Scholarship Program regulations implement the provisions of 38 U.S.C., chapter 76, subchapters I–IV. The proposed regulations, which implement the provisions of subchapter V, will follow those sections of §§ 17.613–17.618. These new regulations will be coordinated with the existing regulations in the management and operation of the Stipend Program.

DATES: Comments must be submitted on or before September 28, 1992. Comments will be available for public inspection until October 7, 1992. These new regulatory additions and changes are proposed to be made effective 30 days after publication of the Final Rule in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulatory amendments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection in room 170 at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Charlotte F. Beason, ED.D., Director, Associated Health Professions Education Programs Service (143), (202) 535–7527.

SUPPLEMENTARY INFORMATION: The Veterans Administration Health Care Amendments of 1980, (Pub. L. 96–330) 38 U.S.C., chapter 73—subchapter IV, (repealed by Pub. L. 100—322) established the Veterans Administration Health Professional Scholarship Program which assisted in providing an adequate supply of trained physicians and nurses for VA and for the Nation; and if needed by VA, other specified health-care professionals. The Veterans Benefits and Service Act of 1988, (Pub. L. 100–322) amended Pub. L. 96–330 by establishing 38 U.S.C., Chapter 76—Health Professionals Educational Assistance Program containing "Subchapter I—General, §§ 7601–7604;" "Subchapter II—Scholarship Program, §§ 7611–7618;" "Subchapter III—Tuition Reimbursement Program, §§ 7621–7625;" and "Subchapter IV—Administrative Matters, Sections 7631–7636." This improved and expanded legislation authorized VA, among other things, to provide scholarship awards to students in a wider array of disciplines as needed by VA.

The Veterans Benefits Amendments Act of 1989, (Pub. L. 101–237) directed that VA in selecting applicants for scholarship awards, ensure that an equitable allocation of awards be made to students pursuing an associate degree in nursing. The Department of Veterans Affairs Nurse Pay Act of 1990, (Pub. L. 101–366) directs VA to implement the "Stipend Program" under 38 U.S.C. chapter 76, Health Professionals Educational Assistance Program, subchapter V, 7651–7655. Governed by Pub. L. 101–366, VA proposes to add new regulations to 38 CFR part 17, following § 17.612. The title of the proposed regulations is "Stipend Program for Members of the Selected Reserve."

The purpose of the Stipend Program is to assist in providing an adequate supply of specified health care professionals for VA and the Nation. As part of the Health Professional Educational Assistance Program, the Secretary of Veterans Affairs may select qualified individuals to receive assistance under subchapter V.

To be eligible to receive assistance, an individual must be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in an accredited course of education that is approved by the Secretary, and that leads toward completion of a degree in a specified health profession involving direct patient care and care incident to direct patient care.

Stipend awards are available for education leading to one degree. Students in the upper division (junior/senior year) of a baccalaureate, or entry-level masters, or last year of an associate degree program in the disciplines specified by the Secretary may be eligible to apply. However, the Secretary may not approve an application under 38 U.S.C. 7603, of an individual applying to receive assistance under subchapter V unless the individual is entitled to benefits under chapter 106 of title 10.

The Secretary may pay to a person selected to receive assistance under subchapter V the amount of $400 (adjusted in accordance with 38 U.S.C. 7631) for each month of the person's enrollment in a program of education covered by the agreement of the person entered into under 38 U.S.C. 7603. Payment of such benefits for any period shall be coordinated with any payment of benefits for the same period under chapter 106 of title 10. Any person receiving assistance under 38 U.S.C., chapter 76, subchapter V, shall agree to provide service, in the full-time clinical practice of the person's profession as a full-time employee of the Department of Veterans Affairs, for a service obligated period of 1-year for each year, or portion thereof, for which a stipend award is provided.

Any person receiving or who has received a reserve member stipend and who fails to perform the service for which the student is obligated shall be liable to the United States in an amount determined in accordance with 38 U.S.C. 7617(c)(1). Any amount owed the United States shall be paid to the United States during the 1-year period beginning on the date of the breach of the agreement.

Should a student be unable to perform the obligated service, as a result of performing active duty including active duty training, under 38 U.S.C. 7654, the student shall be permitted to perform that service upon completion of the active duty service. The Secretary may, by regulation, waive the requirement for the performance of the service for which the student is obligated under § 7654, when the Secretary determines that the student is unable to perform the service for reasons beyond the control of the student or in any case in which the waiver would be in the best interest of the student and the United States.

VA has determined that these proposed regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed regulations affect only individuals who apply for the Stipend Program for Members of the Selected Reserve under the Health Professionals Educational Assistance Program. These regulations will, therefore, impose no regulatory burdens on small entities.

The Catalog of Federal Domestic Assistance Number for this program is: 64.023.

List of Subjects in 38 CFR Part 17

Health professions, Scholarship awards, and Stipend awards.

Approved: June 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

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

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. Part 17 is amended by adding, after section 17.612, an undesignated Center Heading and an authority citation followed by §§ 17.613, 17.614, 17.615, 17,616, 17.617, and 17.618 to read as follows:

Stipend Program for Members of the Selected Reserve

Authority: 38 U.S.C. 7651–7655.

§ 17.613 Purpose.

The Stipend Program for Members of the Selected Reserve (hereafter referred to as "Stipend Program") is designed to grant educational assistance on a competitive basis to qualified applicants in the Selected Ready Reserve. The stipend program is not an entitlement program. Members of the Selected Ready Reserve, who are eligible for the Selected Reserve Educational Assistance Program (GI Bill), may apply to compete for stipend awards. The Stipend Program will assist in providing an adequate supply of specified health care professionals for VA and the Nation.

§ 17.614 Program administration.

As part of the Health Professional Educational Assistance Program, which includes the Scholarship Program (38 U.S.C. 7611–7618), the Stipend Program will follow the regulations as established in 38 CFR part 17, §§ 17.600–17.612 as well as those regulations noted in §§ 17.613–17.618.

§ 17.615 Eligibility.

(a) The Secretary of Veterans Affairs may select qualified individuals to receive assistance under the Stipend Program. To be eligible to receive assistance, a student must be a U.S. citizen accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in an accredited program of education that is approved by the Secretary. The program must lead toward completion of a degree in a specified health profession involving direct patient care and care incident to direct patient care.

(b) Stipend awards are available for education leading to one degree. Students in the upper division of a baccalaureate, or entry-level masters, or last year of associated degree program in the disciplines specified by the Secretary may be eligible to apply. However, the Secretary may not approve the application, under 38 U.S.C. 7603, of the student applying to receive assistance under subchapter V unless the student is entitled to benefits under chapter 106 of title 10, and scores above the 50th percentile on the Armed Forces Qualification Test.

§ 17.616 Amount of assistance.

The Secretary may pay to a student selected to receive assistance under this Stipend Program the amount of $400 (adjusted in accordance with 38 U.S.C. 7631) for each month the person is enrolled in a program of education covered by the Stipend Program agreement under 38 U.S.C. 7603. Payment of the stipend will be coordinated with any payment of benefits for the same period under chapter 106 of title 10.

§ 17.617 Obligated service.

Any student receiving assistance under 38 U.S.C. chapter 76, shall agree to provide service, in the full-time clinical practice of their profession as a full-time employee of the Department of Veterans Affairs, for a service obligated period of one year for each year, or portion thereof, for which the stipend award is provided.

§ 17.618 Breach of agreement; liability.

(a) A student who is receiving or has received a reserve member stipend and who fails to perform the service for which the student is obligated shall be liable to the United States in an amount determined in accordance with 38 U.S.C. 7617(c)(1). Any amount owed the United States shall be paid to the United States during the 1-year period beginning on the date of the breach of the agreement.

(b) Should a student be unable to perform the obligated service, as a result of performing active duty including active duty training, under 38 U.S.C. 7655, the student shall be permitted to perform that service upon completion of the active duty service. The Secretary may waive the requirement for the performance of the service for which the student is obligated under § 7654, when the Secretary determines that the student is unable to perform the service for reasons beyond the control of the student or in any case in which the waiver would be in the best interest of the student and the United States.

[FR Doc. 92–17736 Filed 7–28–92; 8:45 am]
BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AF91

Dependents' Education; Determining the Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: Eligible surviving spouses have a ten-year period during which they must use their Dependents' Educational Assistance. A review of the Department of Veterans Affairs' (VA's) administrative experience and a careful reading of the governing statute suggest that VA has been too restrictive in determining when this ten-year period begins. VA, therefore, is proposing to liberalize the criteria for determining the beginning of surviving spouses' eligibility periods.

DATES: Comments must be received on or before August 28, 1992. Comments will be available for public inspection until September 8, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 8, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.3046(b)(5) governs the determination of the beginning date of eligibility for dependents' educational assistance for most surviving spouses. It states that when the veteran's death occurred after November 30, 1968, and VA made a determination of eligibility for the surviving spouse after October 27, 1986, the beginning date of eligibility is either the date of death for a veteran who died while a total service-connected disability evaluated as permanent in nature existed; the date VA determines that the veteran died of a service-connected disability; or any date between the preceding events (i.e., the veteran's death and VA's determination concerning service-connection) that the surviving spouse may choose as the beginning date.

Thus, under this regulation, if VA finds that a veteran died of a service-connected disability, but did not also have a permanent and total service-connected disability rating at the time of death, the veteran's spouse would have no intervening period from which to choose a beginning date.

However, under the governing provisions of statute, (38 U.S.C. 3501(a)(1)(B) and 3512(b)), where eligibility of a surviving spouse is based on the veteran's death from a service-connected disability, the spouse is allowed a choice of beginning dates between the date of the veteran's death and the date of VA's decision that the death was service-connected. The proposed regulation would correctly give such surviving spouses this choice.

Further, is the case of a surviving spouse who becomes eligible solely based on the veteran's having dies while a total, service-connected disability evaluated as permanent in nature existed, 38 U.S.C. 3501(a)(1)(D) and 3512(b) together provide that such spouse's eligibility period begins on the date of the veteran's death. There are no alternative dates from which to select. Accordingly, the proposed regulation would provide no choice of beginning date to such a surviving spouse.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as the term is defined in E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, 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. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The certification can be made because the amended regulation directly affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 19, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

For the reasons set out in the preamble, 38 CFR part 21, subpart C is amended as set forth below.

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501, 3500–3566.

2. In § 21.3046 paragraph (b)(5) is revised and its authority citation is added to read as follows.

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

* * * * *

(b) *Beginning date of eligibility period-surviving spouses.* * * *

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents educational assistance after October 27, 1986, VA will determine the beginning date of the 10-year period as follows.

(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

* * * * *

[FR Doc. 92-17737 Filed 7-28-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

Department of Veterans Affairs

38 CFR Part 21

RIN 2900-AF34

Veterans Education; Implementation of Legislation Affecting the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Act to amend title 38, United States Code, with respect to veterans education and employment programs which was enacted on March 22, 1991, has several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). Chief among these is the provision of vocational flight training in this program. These proposed regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer these new provisions of law.

DATES: Comments must be received on or before August 28, 1992. Comments will be available for public inspection until September 8, 1992. VA and Department of Defense intend to make the amendments to §§ 21.5060 and 21.5100, like the sections of law they implement, retroactively effective on March 22, 1991. VA and Department of Defense intend to make the amendments to §§ 21.5072, 21.5138 and 21.5250, like the section of law they implement, retroactively effective on April 1, 1991.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 8, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Public Law 102-16 contains many provisions affecting VEAP. Among these are the inclusion of vocational flight training in this program, and a change in the rule concerning when participants will be automatically disenrolled from the program. The regulations governing VEAP must be amended to implement the law.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, 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. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendments to §§ 21.5060 and 21.5100, like the provision of law they implement, retroactively effective on March 22, 1991. VA and Department of Defense find that good cause exists for making the amendments to §§ 21.5072, 21.5138 and 21.5250, like the provision of law they implement, retroactively effective on April 1, 1991. These amended regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for this program is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary of Defense, (Military Manpower & Personnel Policy).

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5060 paragraph (b)(3) and its authority citation are revised to read as follows:

§ 21.5060 Disenrollment.

* * * * *

(b) * * *

(3) The individual has not utilized all of his or her entitlement to benefits

within the 10-year period stated in § 21.5041, and at the end of one year thereafter has not filed a claim for educational assistance allowance as provided in § 21.5030(c).

(Authority: 38 U.S.C. 101, 3225, 3232)

* * * * *

3. In § 21.5072 paragraph (h) and its authority citation are added to read as follows.

§ 21.5072 Entitlement charge.

* * * * *

(h) *Flight training courses.* (1) A charge against the period of entitlement for pursuit of a flight training course will be one month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(4)(viii). When this computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at under § 21.5138(a)(4)(viii) is $150 at the time educational assistance allowance is paid for a period of flight training, the individual will be charged one month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(Authority: 38 U.S.C. 3231(f); Pub. L. 102-16) (Apr. 1, 1991)

4. In § 21.5100 paragraph (d)(1) and the authority citation for paragraph (d) are revised to read as follows.

§ 21.5100 Counseling.

* * * * *

(d) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, VA must provide counseling as described in 38 U.S.C. 3697A prior to selection of a program of education or training. The counseling will follow the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when—

* * * * *

(Authority: 38 U.S.C. 3241, 3697A)

5. In § 21.5138 paragraph (a)(5) and its authority citation are added to read as follows.

§ 21.5138 Computation of benefits payments and monthly rates.

* * * * *

(a) * * *

(5) For flight training the entitlement factor will be computed as follows:

(i) Enter the amount of the individual's contributions remaining in the fund.

(a) _____

(ii) Enter the individual's remaining months of entitlement.

(b) _____

(iii) Divide line a by line b. Enter the quotient.

(1) _____

(iv) Enter two times the amount in line 1.

(2) _____

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual.

(c) _____

(vi) Enter the individual's remaining months of entitlement.

(d) _____

(vii) Divide line c by line d. Enter the quotient.

(3) _____

(viii) Total (lines 1, 2 and 3)

(4) _____

(ix) Enter the charges for flight training certified by the school.

(e) _____

(x) Multiply line e by .60.

(5) _____

(xi) Divide line 5 by line 4. Enter the quotient. (This is the entitlement factor.)

(6) _____

(Authority: 38 U.S.C. 3231(f))

6. Section 21.5250 is revised in its entirety to read as follows.

§ 21.5250 Courses.

(a) *General.* In administering benefits payable under chapter 32, title 38, U.S.C., the Department of Veterans Affairs and, where appropriate, the State approving agencies shall apply the following sections in the same manner as they were applied in the administration of chapters 34 and 36.

(1) Section 21.4250 (except paragraph (c)(1))—Approval of courses.

(2) Section 21.4251—Period of operation of course.

(3) Section 21.4252—(except paragraph (f))—Courses precluded.

(4) Section 21.4253—Accredited courses.

(5) Section 21.4254—Nonaccredited courses.

(6) Section 21.4255—Refund policy; nonaccredited courses.

(7) Section 21.4256—Correspondence courses.

(8) Section 21.4257—Cooperative courses.

(9) Section 21.4258—Notice of approval.

(10) Section 21.4259—Suspension or disapproval.

(11) Section 21.4260—Courses in foreign countries.

(12) Section 21.4261—Apprentice courses.

(13) Section 21.4262—Other training on-the-job courses.

(14) Section 21.4265—Practical training approved as institutional training.

(15) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 3241, 3435, 3473, 3476, 3672, 3675, 3676, 3678, 3679, 3686, 3689)

(b) *Flight courses.* In administering benefits payable for flight training under chapter 32, title 38, U.S.C. VA and the State approving agencies will apply the provisions of § 21.4263 Flight training—38 U.S.C. chapters 30 and 32 and 10 U.S.C. chapter 106. Educational assistance allowance is payable for flight training undertaken by a veteran or serviceperson after March 31, 1991, but is not payable for a course of flight training which commences after September 30, 1994.

(Authority: 38 U.S.C. 3241; Pub. L. 102-16) (Apr. 1, 1991)

[FR Doc. 92-17740 Filed 7-28-92; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300247; FRL-4053-1]

RIN 2070 AC-18

Crufomate; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.295 for residues of the insecticide crufomate (2-chloro-4-(1,1-dimethylethyl)phenylmethyl methylphosphoramidate) and its metabolite 2-chloro-4-(1,1-dimethylethyl)phenol in or on fat, meat, and meat byproducts of cattle, goats, and sheep. EPA is initiating this action because all registered uses of crufomate

on these livestock animals have been voluntarily cancelled by the registrants.

DATES: Written comments, identified by the document control number [OPP-300247], must be received on or before September 28, 1992.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: On October 1, 1988, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide crufomate were voluntarily cancelled by the registrants in response to EPA's 1987 dioxin/furan contamination Data Call-In.

Since the registrations for crufomate products were cancelled more than 3 years ago, stocks of these products (in the inventory of formulators or distributors and dealers) have presumably been depleted. Accordingly, the Agency believes that these products are no longer offered in commercial trade.

The tolerances under the Federal Food, Drug, and Cosmetic Act for residues of crufomate in or on meat, fat, and meat byproducts of cattle, goats, and sheep were obtained in conjunction with the FIFRA registration. EPA has no information to suggest that crufomate is used on livestock animals whose meat is exported to the U.S.

Since crufomate is no longer registered for use on livestock animals or livestock premises, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.295 for residues of crufomate in or on meat, fat, and meat byproducts of cattle, goats, and sheep. Further, since crufomate is not a persistent chemical and its registrations for use were cancelled more than 3 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains crufomate may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke all crufomate tolerances listed in 40 CFR 180.295 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300247]. All written comments filed in response to this document will be available for public inspection in the Public Docket and Freedom of Information Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of crufomate on cattle, goats, and sheep were voluntarily cancelled by the registrants more than 3 years ago, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: July 15, 1992.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.295 [Removed]

2. By removing § 180.295 *Crufomate; tolerances for residues.*

[FR Doc. 92-17548 Filed 7-28-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300255; FRL-4068-5]

RIN 2070-AC18

Profluralin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.348 for residues of the herbicide profluralin [*N*-(cyclopropylmethyl)-*a,a,a*-trifluoro-2,6-dinitro-*N*-propyl-*p*-toluidine] in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of profluralin on food crops have been voluntarily canceled.

DATES: Written comments, identified by the document control number [OPP-300255], must be received on or before September 28, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays..

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the pesticide profluralin in or on the raw agricultural commodities alfalfa (fresh), alfalfa hay, cottonseed, safflower seed, seed and pod vegetables (dry or succulent), seed and pod vegetable fodder and forage, soybean hay, and sunflower seed; eggs, milk, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep. These tolerances are listed in 40 CFR 180.348.

In April 1984, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the herbicide profluralin were voluntarily canceled by the sole registrant.

The tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of profluralin in or on the various raw agricultural commodities listed above were obtained in conjunction with the FIFRA registration. The EPA has no information to suggest that profluralin is used on any of the above-named crops exported to the United States.

Since profluralin is no longer registered for use on food or feed crops, and since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA proposes to revoke all the tolerances listed in 40 CFR 180.348 for residues of profluralin. Further, since profluralin is not a persistent chemical and since its registrations were voluntarily canceled 8 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains profluralin may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke all profluralin tolerances listed in 40 CFR 180.348 be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300255]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291 the EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The EPA has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of profluralin were canceled in 1984, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: July 15, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.348 [Removed]

2. By removing § 180.348 *Profluralin; tolerances for residues.*

[FR Doc. 92–17549 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–155. RM–8020]

Radio Broadcasting Services; Blair, Nebraska; Storm Lake, Perry and Sac City, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sunrise Broadcasting of Nebraska, Inc., seeking the substitution of Channel 268C3 for Channel 292A at Blair, Nebraska, and the modification of Station KBWH (FM)'s license to specify the higher class channel. To accommodate the allotment of Channel 268C3 to Blair, petitioner also requests the modification of Station KAYL's license by substituting Channel 269C1 for Channel 268C1 at Storm Lake, Iowa, the modification of Station KDLS–FM's license by substituting Channel 286A for Channel 269A at Perry, Iowa, and the substitution of Channel 248A for unoccupied and unapplied for Channel 286A at Sac City, Iowa. The Commission also proposes to allot Channel 247C3 to Blair to accommodate any competing expressions of interest which may be filed for Channel 268C3 at Blair. See also **SUPPLEMENTARY INFORMATION**, infra.

DATES: Comments must be filed on or before September 15, 1992, an reply comments on or before September 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Esq., Rosenman & Colin, 1300 19th Street, N.W., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 92–155, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

The coordinates for Channel 268C3 at Blair are North Latitude 41–38–52 and West Longitude 96–17–55. The coordinates for Channel 247C3 at Blair are 41–42–20; 96–17–22. The coordinates for Channel 286A at Perry are 41–49–58; 94–02–15. The coordinates for Channel 269C1 at Storm Lake are 42–38–05; 95–10–10. The coordinates for Channel 248A at Sac City are 42–25–12; 95–00–18.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regrading proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17820 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 28)]

Rail General Exemption Authority: Export Corn and Export Soybeans

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 15, 1992 (57 FR 31489, July 16, 1992), the Commission sought public comment by August 17, 1992, on whether to exempt from regulation the rail transportation of export corn and export soybeans. By letter filed July 20, 1992, the Association of American Railroads (AAR) requests a 30-day extension until September 16, 1992, to file comments. AAR states additional time is needed because the current schedules of its counsel and necessary member road personnel do not allow adequate time to prepare and review evidentiary submissions by August 17, 1992. The request is reasonable and will be granted.

DATES: Initial comments are due on September 16, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927–5660.

[TDD for the hearing impaired: (202) 927–5721]

Decided: July 23, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–17876 Filed 7–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Notice of Extension of the Final Decision to List the Washington, Oregon, and California Population of the Marbled Murrelet as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of 6-month extension of deadline and reopening of the comment period.

SUMMARY: On June 20, 1991, the Fish and Wildlife Service (Service) proposed to determine the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) to be a threatened species, under the provisions of the Endangered Species Act of 1973, as amended (Act). The Act requires the Service to make a final determination on such proposals within 12 months, but provides for a 6-month extension if there is substantial

disagreement regarding the sufficiency or accuracy of the available data relevant to that determination. The Service finds that there is such a disagreement and therefore extends the deadline with respect to the decision to list the marbled murrelet.

DATES: The deadline for final action on the proposal is now December 20, 1992. The public comment period is reopened until September 28, 1992.

ADDRESSES: Comments and materials should be sent to Portland Field Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, at the above address (503/231–6179).

SUPPLEMENTARY INFORMATION: .

Background

The Service proposed threatened status for the marbled murrelet occurring in Washington, Oregon, and California on June 20, 1991 (56 FR 28362). It is believed that the marbled murrelet in this three-State area has been adversely affected by timber harvest operations, potential oil spills, and gill net fisheries off the Washington coast. The marbled murrelet is listed as threatened by the Canadian Government in British Columbia, Canada. The marbled murrelet occurring in Alaska is not listed and is not included in the listing proposal. However, the Service continues to evaluate its status.

The North American subspecies of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound, southward coastally throughout the Alexander Archipelago of Alaska, and through British Columbia, Washington, and Oregon, to central California. Some wintering birds are found in southern California. A separate subspecies (*B. m. perdix*) is present in Asia.

Concentrations of marbled murrelets offshore are almost always adjacent to older forests on-shore. Nelson (1990) and Ralph et al. (1990) found marbled murrelets were absent offshore where on-shore older forests were absent. Large geographic gaps in offshore marbled murrelet numbers occur in areas such as that between central and northern California (a distance of 480 kilometers (300 miles)), and between Tillamook County, Oregon, and the Olympic Peninsula in Washington (a distance of about 190 kilometers (120 miles)), where nearly all older forests have been removed near the coast. Small rafts of marbled murrelets may be found associated with remaining isolated stands of older forests (e.g., the Nemah site). Historically, records for California indicate that marbled murrelets were found "regularly" and were "plentiful" along the coast from Monterey County north to the Oregon border (Grinnell and Miller 1944, Paton and Ralph 1988). Historical records of marbled murrelets also showed significant numbers during the season near the mouth of the Columbia River in Clatsop County, Oregon. Currently, marbled murrelets are rarely found in this area, where extensive harvesting of older forests has also occurred (Nelson et al., in press).

Population size for marbled murrelets is most accurately estimated by counting the numbers of birds observed in the marine environment. Washington's breeding population is estimated to be a maximum of 5,000 birds (Speich et al., in press). The current population estimates for Oregon and California are fewer than 1,000 pairs (Nelson et al., in press), and about 2,000 birds (Carter el al. 1990), respectively. By extrapolating from known population numbers in relation to the remaining available nesting habitat, it has been estimated that 60,000 marbled murrelets may have been found historically along the coast of California (Larsen 1991).

The general issue of what constitutes a listable vertebrate population under the Act has been a longstanding concern due to the difficulties inherent in identifying and designating population segments for broad ranging species such as the marbled murrelet. The Act currently defines "species" to include "any subspecies of fish and wildlife * * * and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." The original language in the Act referred to "taxa in common spatial arrangement that interbreed when mature." The definition of "species" was modified in subsequent amendments to limit its applicability to vertebrates only and to change "common spatial arrangement" to "distinct population segment." However, the Act never has precisely defined what is meant by "population." The Service generally considers threats to species at the species or subspecies level under the Act, but occasionally focuses on threats or impacts to distinct population segments if deemed appropriate for a species. In 18 cases since the enactment of the Act has the Service acted to identify and separately list vertebrate populations.

When considering whether to list a population segment, the Service assesses the biological significance of the population segment to the species or subspecies as a whole. Thus, threats to a population will vary depending on which segment of the species' range is being considered. Additionally, one segment may be significantly threatened, but the biological importance of that segment to the species as a whole may not be considered significant to the listing of a species.

Section 4(b)(6)(a)(i) of the Act requires the Service to take one of three alternative actions within one year of a listing proposal: (1) Publish a final regulation listing the species, (2) publish a notice that the listing proposal is being withdrawn, or (3) publish a notice that the one year period is being extended under section 4(b)(6)(a)(i). That section provides that the Service may extend the one-year period for up to 6 months upon finding "that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination" of whether to list the species. The Service must base its decisions under these provisions on the best scientific and commercial data available. As discussed below, the Service believes there is a substantial disagreement regarding the sufficiency of the scientific data relevant to identification and designation of the population segment or segments of the overall range of the subspecies that should be the subject of any listing action that is taken. The Service accordingly is extending the deadline for making a final decision on the listing proposal in order to resolve the population issue.

Information received during the comment period indicates there is such a substantial disagreement regarding the marbled murrelet. Some of the comments questioned the Service's proposal to consider the tri-State area as a single population for the purposes of listing under the Act, and recommended that alternate listings were more appropriate. The Oregon Department of Fish and Wildlife, for instance, recommended that the Service treat the marbled murrelet in California as a separate population that should be listed as endangered. Another comment cited data on logging practices and impacts from the Exxon Valdez oil spill to support a recommendation that the marbled murrelet in Alaska should be listed along with those in the tri-State area. Another comment questioned the validity under the Act of the proposed decision to identify the United States-

Canada border as the limit of a population. These conflicting views, together with the relative scarcity of data concerning the locations and status of the marbled murrelet in the tri-State area, indicates a disagreement concerning the sufficiency of existing data to support a definitive determination as to whether the marbled murrelet in the proposed tri-State area represents one disjunct population, more than one population, or is a continuum of a single population with Canada and Alaska. Information that might enable a definitive determination, such as data from marking studies showing that segment populations overlap or evidence of breeding interchange among apparently disjunct marbled murrelet concentrations in California and Oregon or between the tri-State area and Canada or Alaska, are not currently available. Moreover, the issue of whether there is one or more distinct population segments in the tri-State area, or whether even the entire area comprises a population, could have a significant and even determinative impact on the ultimate listing decision.

With regard to the marbled murrelet, the disagreement over the sufficiency of the data on which to designate a discrete vertebrate population (or populations) became more apparent as a result of the comments received on the proposal. Further analysis of the available population and threat data for the subspecies is required in order adequately to evaluate both the threats to the subspecies as a whole, the threats to various population segments, and the significance of various population segments to the subspecies. The Service is concerned that its final decision on the designation of a listable population be consistent with actions taken with similar species.

The issues involved in the decision concerning the marbled murrelet are complex, and are hampered by limited data availability in key areas, particularly as it relates to identification of discrete population segments. The additional time required for the Service to adequately address these issues is not anticipated to appreciably impact the status of the subspecies. The majority of older forests utilized by the marbled murrelet occurs on land under Federal jurisdiction (U.S. Forest Service and Bureau of Land Management), and there is approximately 80 percent habitat overlap with the listed northern spotted owl. Further, most old growth forests under Federal jurisdiction are subject to a complete prohibition on new timber sales as a result of three separate Federal court injunctions. See *Lane County Audubon Society* v. *Jamison*, Nos. 91–36019 and 91–36340 (9th Cir., filed March 4, 1992) (prohibits awarding of new BLM timber sales); *Portland Audubon Society* v. *Lujan*, No. 87–1160–FR (D. Ore, filed June 8, 1992) (prohibits offering or awarding, or logging pursuant to, of new BLM timber sales in habitat suitable for the northern spotted owl); *Seattle Audubon Society* v. *Moseley*, No. C92–479WD (W.D. Wash., filed July 2, 1992) (prohibits awarding of new timber sales in habitat suitable for the northern spotted owl). Moreover, management actions in these areas during the extended review period for the marbled murrelet listing proposal will not significantly impact the subspecies, because old growth forests under this jurisdiction are currently subject to Federal Court injunctions that prohibit timber sales as described above. The Service believes the cumulative effect of these injunctions will provide the fullest habitat protection possible during the extended review period.

For all of the above reasons, the Service extends until December 20, 1992, the period within which to determine whether the marbled murrelet in Washington, Oregon, and California should be listed as a threatened species. The Service solicits additional data on the question of the appropriate designation of distinct population segments, if any, for the marbled murrelet.

References Cited

Carter, H.R., D.L. Jaques, C.S. Strong, G.J. McChesney, M.W. Parker, and J.E. Takewawa. 1990. Draft rept. Survey of seabird colonies of northern and central California in 1989. U.S. Fish and Wildl. Serv., Northern Prairie Wildlife Research Center.

Grinnell, J. and A.H. Miller. 1944. The distribution of the birds of California. Pacific Coast Avifauna No. 27, Cooper Ornithological Society, Berkeley, CA. 608 pp.

Larsen, C.J. 1991. Report to the Fish and Game Commission: A status review of the marbled murrelet (*Brachyramphus marmoratus*) in California. California Dept. of Fish and Game, Wildlife Management Division, Department Candidate Species Report 91–1.

Nelson, S.K. 1990. Distribution of the marbled murrelet in western Oregon. Interim Report, Oregon Dept. of Fish and Wildlife, Nongame Wildlife Research Program, Contract 89–9–02, Portland, OR. 46 pp.

Nelson, S.K., M.L.C. McAllister, M.A. Stern, D.A. Varoujean, and J.M. Scott. In press. The marbled murrelet in Oregon, 1899–1987. *In* Carter, H.R. (ed.). Status, Distribution, and Management of the Marbled Murrelet, Proc. W. Found. Vert. Zool.

Paton, P.W. and C.J. Ralph. 1988. Geographic distribution of the marbled murrelet in California at inland sites during the 1988 breeding season. California Dept. of Fish and Game, Sacramento, CA. 35 pp.

Ralph, C.J., S.L. Miller, N.L. Naslund, B. O'Donnell, P.W.C. Paton, and J. Seay. 1990. Marbled murrelet research during 1989 in northern and central California—an interim report. Technical Report 1990–8, Nongame Bird and Mammal Section Report, California Dept. of Fish and Game, Sacramento, CA. 39 pp.

Speich, S.M., T.R. Wahl, and D.A. Manuwal. In press. The numbers of marbled murrelets in Washington marine waters. Proc. W. Found. Vert. Zool.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and Threatened Species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 24, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–18046 Filed 7–27–92; 2:16 pm]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

RIN 0560-AC77

1992-1993 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1992-1993 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013, 202-690-0012.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major. It has been determined that this rule will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loan and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

Since the determination of the 1992-1993 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined the 1992-1993 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1992-1993 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	129
Burley	134

RATE OF PENALTY—Continued

[1992-1993 Marketing Year]

Kinds of tobacco	Cents per pound
Fire-Cured (Type 21)	114
Fire-Cured (Types 22 and 23)	160
Dark Air-Cured (Types 35 and 36)	138
Virginia Sun-Cured (Type 37)	108
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55)	116

Signed at Washington, DC on July 23, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92-17846 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 92-106-1]

Bird Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice that the Animal and Plant Health Inspection Service has personnel available to provide services for 13 additional privately operated bird quarantine facilities for birds imported into the United States, and that applications for approval of these facilities may now be submitted for consideration. We have personnel to provide services for: six additional facilities in Miami, FL; two in Newark, NJ; one in Nogales, AZ; one in Phoenix, AZ; one in Del Rio, TX; one in Laredo, TX; and one in McAllen, TX.

DATES: Consideration will be given to applications received on or before September 28, 1992. They should be addressed to the Import-Export Animals Staff, VS, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5097.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) include, among other things, provisions

concerning the importation of birds into the United States. Section 92.105 requires, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world be entered at certain ports. Section 92.106(a) requires, with certain exceptions, that these birds be quarantined at one of our quarantine facilities or at a privately operated quarantine facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Section 92.106(c)(5) of the regulations sets forth the provisions for selection of applicants for consideration for approval of privately operated bird quarantine facilities. In accordance with these regulations, we are giving notice that APHIS has personnel available to provide services for 13 additional privately operated bird quarantine facilities and is now accepting applications for consideration for approval of these facilities.

Applications

An applicant must submit a completed VS Form 17–11,[1] "Application of Approval of Quarantine Facilities for Birds," or a document which states that it is an application for approval of a quarantine facility for birds and includes the following information (the same as that called for by VS Form 17–11):

(1) Applicant's name, address, and telephone number;

(2) Status of applicant, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(3) Name, title, and address of intended operators, partners, officers, directors, holders or owners of 10 per centum or more of voting stock, and employees in a managerial or executive capacity;

(4) (Optional) Address where the bird quarantine facility will be located;

(5) (Optional) A drawing of the floor plan for the facility showing the location of bird holding areas, equipment storage areas, office areas, clothes storage and change areas, feed storage areas, necropsy room (showing entry and refrigeration), washing areas for equipment, shower areas, ventilation arrangements, and entries and exits;

(6) (Optional) Whether the water source of the facility will be public or private;

(7) (Optional) Whether disposal of waste from the facility will be by sewer or incinerator, or both;

(8) Whether priority status is requested, and, if so, the extenuating circumstances relied on for such request; and

(9) Date; certification by signature of the intended operator, partner, or officer; and title of such individual after the following language: "Application is hereby made for approval of a USDA Approved Quarantine Facility for bird importations. I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in 9 CFR part 92."

Consideration of Applications

If the number of applications for bird quarantine facilities at a specified port of entry does not exceed the number of announced openings, each application shall be considered for approval of a facility at that port of entry.

If the number of applications for bird quarantine facilities at a specified port of entry exceeds the number of announced openings, priority status for selection shall be given to applications from operators of currently approved facilities who request to transfer operations from a facility at a port of entry where they currently operate to a facility at a port of entry specified in the announcement, if the Administrator determines that there is a change in circumstances beyond the control of the operator which makes it impracticable to continue operations at the currently approved facility, such as termination of services from a Government agency or termination of services from airlines.

The following procedures shall apply when considering applications eligible for priority status at a specified port of entry:

(1) If the number of applications eligible for priority status does not exceed the number of announced openings, each application eligible for priority status shall be considered for approval of a facility at that port of entry.

(2) If the number of applicants with one or more applications eligible for priority status at a specified port of entry is fewer than the number of openings but the number of applications eligible for priority status exceeds the number of openings, each applicant with one or more applications eligible for priority status shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings at that port of entry, each applicant who submitted two or more applications eligible for priority status shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications eligible for priority status exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this matter until there are no more openings.

(3) If the number of applicants with one or more applications eligible for priority status exceeds the number of announced openings, each of these applicants (regardless of the number of applications submitted) will be eligible to be selected for consideration for approval of no more than one new facility at that port of entry, and the selection of such applicants to be considered for approval shall be determined based on a drawing.

The following procedures shall apply for consideration of applications not included as eligible for priority status if one or more openings remain for bird quarantine facilities at a specified port of entry after all applications eligible for priority status have been selected for consideration (applicants selected for consideration for approval based on priority status are not eligible to be considered under these provisions for remaining openings in the same drawing in which they received priority status):

(1) If the number of applicants is fewer than the number of remaining openings but the number of applications exceeds the number of remaining openings, each applicant shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings, each applicant who submitted two or more applications shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this manner until there are no more openings.

(2) If the number of applicants exceeds the remaining number of announced openings, an applicant (regardless of the number of applications submitted by such applicant) will be eligible to be selected for consideration for approval of no more than one new facility at that port of entry, and the selection of such

[1] VS Form 17–11 is available from the Administrator, c/o the Import-Export Animals Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

applicants to be considered for approval shall be determined based on a drawing.

Drawing

If a drawing is necessary, the participants in the drawing shall be notified by registered or certified mail of the date, place, and time of the drawing so that they may attend; however, attendance by participants is not required.

Notification

Applicants selected for consideration for approval of a bird quarantine facility shall be notified of such selection by registered or certified mail. As a condition of approval as a bird quarantine facility, the facility must comply with the requirements set forth in this section within 18 months from the date of notification. The Administrator may refuse approval of any bird quarantine facility if an intended operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime set forth in paragraphs (c)(6)(ii) (B) or (C) of § 92.106. Before a decision is made with respect to the eligibility of any facility for approval, a person inspection of the facility shall be made by a Veterinary Medical Officer of APHIS to determine whether it complies with the standards set forth in this section. Approval of any bird quarantine facility shall be contingent on a determination made by the Administrator that adequate personnel are available to provide services required by the facility if approved.

Additional provisions concerning privately operated quarantine facilities are set forth in paragraphs (a) and (c) of § 92.106 of the regulations. These provisions, among other things, contain certain minimum requirements concerning location, construction, sanitation, security, and operational procedures.

Authority: 7 U.S.C. 1622; 91 U.S.C. 1306, 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d)

Done in Washington, DC, this 23rd day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–17879 Filed 7–28–92; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

Single Family Housing Inventory

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Farmers Home Administration (FmHA), an agency of the United States Department of Agriculture, has entered into a Memorandum of Understanding with the Department of Housing and Urban Development (HUD) to coordinate the use of FmHA Single Family Housing (SFH) inventory properties for the benefit of participants in the HUD HOPE 3 Program. FmHA acquires SFH properties in inventory as a result of liquidation of its loan security. Inventory properties which meet FmHA program standards are repaired and sold, preferably to FmHA program applicants on program credit terms. Nonprogram properties are broom cleaned and sold for cash or on nonprogram credit terms. HUD, through the HOPE 3 program, provides home ownership opportunities for low income families and individuals (Participants) by providing grantees (Grantees) with Federal assistance to initially acquire and rehabilitate government owned properties. Grantees acquire SFH properties from government agencies and sell them to Participants at affordable prices, after making needed repairs. Alternatively, Grantees can facilitate direct acquisition and repair of housing by Participants by providing financing, funds for down payments, repairs and/or subsidized interest rates.

FOR FURTHER INFORMATION CONTACT: Further information about the HUD–FmHA Memorandum of Understanding of the use of FmHA SFH inventory properties in the HUD HOPE 3 Program may be obtained from FmHA through Frances B. Calhoun, Division Director, SFH Servicing and Property Management, or Reed J. Petersen, Branch Chief, SFH Property Management, Farmers Home Administration, USDA, room 5307, 14th and Independence Avenues, SW., Washington, DC 20250, telephone 202–720–1452, or from HUD through Marcia Dodge, Deputy Director, CPD/OUR telephone 202–708–2685 or John Garrity, Director, HOPE 3, telephone 202–708–0324 at 451—7th Street, SW., Washington, DC 20410.

Dated: June 22, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–17845 Filed 7–28–92; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

[Docket No. 92–018N]

FSIS Strategic Planning

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Food Safety and Inspection Service (FSIS) is seeking public input for a strategic plan that will guide the Agency's programs through the year 2000. This notice solicits participation by consumer and other public interest groups, the meat and poultry industry, academia, and any other interested members of the public. FSIS is also seeking input from its employees at all levels.

DATES: Comments must be received on or before August 28, 1992.

ADDRESSES: Written comments to: Policy Office: Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dan Vitiello, Director, Planning Coordination and Analysis Unit, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–2843.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 92–018N. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

FSIS is planning to enhance the scientific and public health basis of meat and poultry inspection. The Agency is seeking the most effective

inspection systems to guarantee safe, wholesome and accurately labeled products for consumers and to encourage industry innovations in these areas. At the same time, the Agency must utilize its resources to focus inspection on the areas that pose the most risk to the public health.

Three separate reports from the National Academy of Sciences have made recommendations concerning various aspects of meat and poultry inspection. The reports are: Meat and Poultry Inspection: The Scientific Basis of the Nation's Program, 1985; Poultry Inspection: The Basis for a Risk-Assessment Approach, 1987; and Cattle Inspection: Committee on Evaluation of USDA Streamlined Inspection System for Cattle, 1990.

To build a framework for the future, FSIS is seeking input on the issues that should be addressed in its strategic plan and on priorities that should be met to enhance the public health. The Agency is seeking ideas on the best approaches to applying its Operating Principles to meat and poultry inspection. The Operating Principles are:

I. Public Health Protection—FSIS' primary responsibility is to ensure safe meat and poultry in order to protect the public health.

II. Economic Fraud—FSIS will also strive to ensure that meat and poultry products are truthfully and accurately labeled.

III. Risk-Based Allocation of Resources—The allocation of Agency resources should be based on the risks to the public inherent in a product, a process, or a producer.

IV. Regulatory Enforcement—The Agency will make full use of its regulatory authorities to enforce industry accountability for providing safe, wholesome, and accurately labeled products.

V. Use of Science and Technology—The Agency will design and implement inspection programs that take full advantage of contemporary science and technology.

VI. Design of Prevention Systems—The Agency will focus on prevention and will assist the public and private sectors to design process and production control systems that enhance public health protection.

VII. Total Quality Service—The Agency will provide the highest quality service by fully involving its employees and constituents, recognizing excellence and continuously improving its operations.

VIII. Human Resources—FSIS recognizes that a diverse, highly skilled, and dedicated workforce is essential to its mission.

Once a draft strategic plan is developed, FSIS will seek more public input on that specific document.

Done at Washington, DC, on July 23, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-17865 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Exemption of the Silver Creek Salvage Sale, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Silver Creek project area, Emmett Ranger District, Boise National Forest are exempted from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective on July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Cyd Weiland, NFMA/NEPA Coordinator, or Don Dittmer, Timber Management Assistant, Emmett Ranger District, Boise National Forest, 1648 North Washington, Emmett, ID 83617, Telephone: 208-365-3811.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Emmett Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres, where appropriate. They have also prepared the Silver Creek Salvage Environmental Assessment (EA) to identify issues, develop alternatives, and analyze the effects of implementing timber salvage and other recovery activities.

The analysis area for the Silver Creek Salvage EA is located 16 air miles north of Garden Valley, Idaho. The area includes about 12,660 acres with insect mortality scattered throughout. The Forest will harvest approximately 2-3 million board feet from about 2,000-3,000 scattered acres. This sale would harvest only dead and dying trees using helicopter (approximately 720-1,650 scattered acres), and ground-based logging systems (about 1,350 scattered acres). Cutting areas would not exceed five acres in size. About 80 acres of the Peace Rock Inventoried Roadless Area would be harvested by helicopter. Any new opening (outside of the Peace Rock area) larger than three acres would be evaluated and scheduled for planting, if stocking is considered inadequate and natural regeneration is not expected to be successful.

There is no road or helicopter-landing construction proposed for the salvage operations. Approximately 6.8 miles of road would be reconstructed. About 38.4 miles would be maintained by blading, or blading and brush trimming, to facilitate log haul. Management director for the Silver Creek Salvage area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan describes standards to protect soil, water, wildlife, visual, and other on site resources. The proposed action for the Silver Creek Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

The Silver Creek Salvage include a 3,850-acre portion of the Peace Rock roadless area. That portion of the Peace Rock area within the project area has been allocated to commercial timber production as well as other multiple uses by the Forest Plan. Salvage timber would be removed from approximately 80 acres of this IRA using helicopters. Landings would be adjacent to existing roads outside the roadless area.

Forest Pest Management Specialist and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be removed in the logs (bark beetles) and Knutson-Vandenburg (KV-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is

sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $155,000. Of this, approximately $39,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Silver Creek Salvage and Recovery Project, Emmett Ranger District, Boise National Forest, from appeal. The environmental assessment has disclosed the effects of the proposed actions on the environment and addressed issues resulting from the proposal.

Dated: July 22, 1992.

John P. Butt,

Director, Planning and Budget Intermountain Region, USDA Forest Service.

[FR Doc. 92-17735 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Fessenden Recreation Center RC&D Measure, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fessenden Recreation Center, Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, 4405 Bland Road, suite 205, Raleigh, North Carolina 27609; Phone number (919) 790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for installing recreational facilities on the Fessenden Tract in the community of Buxton, Hatteras Island. The planned works of improvement include constructing a recreation center, wetland enhancement and water access boardwalk, parking areas, and improving the ballfield. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of Finding of No Significant Impact (NOFONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: July 15, 1992.

Coy A. Garrett,

State Conservationist.

[FR Doc. 92-17857 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-16-M#

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, August 19, 1992, at the Urban County Government Building, City Council Chambers, 200 E. Main Street, Lexington, Kentucky 40507. The meeting will include: (1) A discussion of the status of the Commission; (2) a discussion and update of the current project; and (3) a session to receive information from community leaders on bigotry and related violence in Kentucky with an emphasis on Lexington.

Persons desiring additional information, or planning a presentation to the Committee should contact Kentucky Chairperson Thelma Clemons 502/893-1055 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 21, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-17835 Filed 7-28-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Maryland State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil rights, that a meeting of the Maryland State Advisory Committee will convene at 9 a.m. and adjourn at 6 p.m. on Wednesday, August 12, 1992, Montgomery College, Board of Trustees Hearing Room 115, 900 Hungerford Drive, Rockville, MD 20850, Phone: 301/279-5272. The purpose of the meeting is to gather information from knowledgeable sources regarding civil rights problems of Asian Americans in Montgomery County. Representative viewpoints will be presented by Asian American membership organizations, Montgomery County officials for human relations, employment services, public schools and law enforcement.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Dr. H. DeWayne Whittington at 301/623-4521; or John I. Binkley, Director, ERO at (202/523-5264); or TDD (202/3376-8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 22, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-17836 Filed 7-28-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Inspection and Certification; Notice of Availability NMFS HACCP-based Inspection Service.

Form Number: None.

Type of Request: New collection.

Burden: 35 respondents; 875 reporting hours; average hours per response—25 hours; 35 recordkeepers—167 annual hours per recordkeeper.

Needs and Uses: The information to be collected from participants will be used by NMFS in determining compliance with the program. The reported information, a Hazard Analysis Critical Control Point (HACCP) plan, describes the products and processing operations, the hazards associated with each step of the process, and the facility's monitoring procedures. NMFS will be auditing the facility and its records to determine the facility's maintenance of its plan.

Affected Public: Business or other for-profit, small businesses or organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92-17862 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Registration to Trawl for Shrimp Using Restricted Tow Times in Lieu of Turtle Excluded Devices in the North Carolina Restricted Area.

Form Number: None.

Type of Request: New collection.

Burden: 30 respondents; 4 reporting hours; average hours per response—.08 hours.

Needs and Uses: Fishermen wanting to trawl in the restricted area using to times in lieu of turtle excluded devices must call to register with the National Marine Fisheries Service, and provide information on the name and number of the vessel, appropriate state authorization, and date of proposed fishing.

Affected Public: Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Officer Building, Washington, DC 20503.

Dated: July 23, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92-17867 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-08-M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	product
Aqua Kleer Industries, Inc	9420 E. Doubletree Ranch Rd., Scottsdale, AZ 85258.	6/25/92	Water filtration devices.
Sandia Oil & Gas Corporation	909 N.E. Loop 410, Ste. 818, San Antonio, TX 78209.	6/25/92	Crude oil and natural gas.
Apparel Suppliers of California, Inc	687 Anita Street, Chula Vista, CA 91911	6/25/92	Men's suits, jackets, trousers and tuxedos (apparel).
Sicilian Chef, Inc. T/A Caesar's Pasta Products	1001 Lower Landing Road, Blackwood, NJ 08012.	6/25/92	Pasta (food and beverage).
Robert P. Miller Company	327 Main Street, Shoemakersville, PA 19555	6/25/92	Apparel—Men's shirts and underwear (briefs).
Cushman Industries, Inc	806 Windsor Street, Hartford, CT 06120	6/25/92	Machinery and equipment—work holding devices for machine tools.
Schuler-Subra, Inc	83 Doat Street, Buffalo, NY 14211	7/02/92	Metal products—stainless steel kitchen counters, sinks and range hoods.
Scanner Graphics, Inc	325 Minor Avenue, North, Seattle, WA 98109	7/02/92	Misc.—Photographic plates and film for offset reproduction.
Thiel Tool & Engineering Co., Inc	4622 Bulwer Avenue, St. Louis, MO 63147	7/06/92	Misc.—Auto bumper stampings and body stampings.
Cabin Creek Quilts Cooperative Association	4208 Malden Drive, Malen WV 25306	7/06/92	Quilts.

Firm name	Address	Date petition accepted	product
Fairfield Manufacturing Company, Inc	U.S. 52 South, Lafayette, IN 47903	7/06/92	Metal products—high precision custom gears and planetary gear systems.
Kistler-Morse Corporation	10201 Willows Road, NE., Redmond, WA 98052	7/06/92	Weighing system consists of two basic parts: a sensor and a display.
Package Machinery Co	24 West Street, Safford Springs, CT 06076	7/06/92	Mach. and equip.—machinery that weighs, wraps, packs, fills and seals, also bag making machines.
Parker Metal Corporation	60 Prescott Street, Worcester, MA 01605	7/06/92	Misc.—shopping and carry out carts, blister package, auto hardware and nails.
Zenith Fuel Systems, Inc	1048 Industrial Park Road, Bristol, VA 24201	7/06/92	Metal products—carburetors and repair kits.
Aero Systems, Incorporated	9850 Rush Street, South El Monte, CA 91733	7/07/92	Structural aerospace components.
Pawtucket Foam Products	181 Conant Street, Pawtucket, RI 02860	7/08/92	Apparel—jackets, pants, headwear, mittens, slippers and accessories used in out door camping.
Divelbiss Corporation	9776 Mt. Gilead Road, Fredericktown, OH 43019.	7/08/92	Electronics—controllers for voltage not exceeding 1000 volts and accessories.
Nevers Industries, Inc	14125 21st Avenue North, Minneapolis, MN 55447.	7/14/92	Wood visual boards.
Noel Seafood Company, Inc	Rt. 5, Box 38 (Highway 694), Abbeville, LA 70510.	7/14/92	Crawfish.
International Crystal Mfg. Co., Inc	10 N. Lee Street, Oklahoma City, OK 73126-0330.	7/14/92	Quartz Crystals.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 21, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-17872 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Addendum to Notice of Initiation; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Antidumping Investigations, room B-099, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-0161.

Selection of Respondents

This is to inform interested parties in these investigations of the procedures the Department intends to follow in selecting the foreign manufacturers which will be required to respond to an antidumping questionnaire. In accordance with our normal practice, separately for each investigations, we expect to issue questionnaires only to those manufacturers whose sales volume accounts for the top 60 percent of exports of the subject merchandise to the United States during the period of investigation (January-June, 1992). This will be know as the "mandatory respondents" in the respective investigations.

Any manufacturer intending to file a voluntary response (*i.e.*, on which does not expect to be captured by the 60 percent cut-off described above) should notify the Assistant Secretary for Import Administration no later than August 7, 1992. Once the Department has determined the total number of mandatory respondents in all 48 antidumping investigations involving these steel products, and after analyzing the requests of potential voluntary respondents, we will announce our position on whether any voluntary responses can be accepted given current budgetary constraints resulting in resource and personnel shortages.

Those companies considering the filing of a voluntary response should be aware of the Department's policy regarding such responses. Once a company voluntarily submits a response to the antidumping questionnaire, it will be afforded the same treatment as a mandatory respondent. That is, we will allow the respondent to correct deficiencies in its response which are identified by the Department. However, should the response, in the opinion of the Department, be incomplete, inaccurate, untimely, or unverifiable, the Department will assign to that company an estimated margin based on the best information available, and not the "All Others" margin (*i.e.*, the weighted-average margin of the other respondents with affirmative margins).

Dated: July 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17864 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping Duty Investigations and Postponement of Preliminary Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT:

Contact persons	*Telephone*	*Office*
European Countries:		
Gary Taverman	202-377-0161	Antidumping Investigations.
Louis Apple	202-377-1769	Antidumping Investigations.
Steve Alley	202-377-5288	Antidumping Investigations.
Korea:		
Ed Yang	202-377-5254	Antidumping Compliance.
Maureen Flannery	202-377-2923	Antidumping Compliance.
All Other Countries:		
Laurie Lucksinger	202-377-3793	Agreements Compliance.
Richard Weible	202-377-3793	Agreements Compliance.

Mailing address for all contacts: Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATIONS

The Petitions

On June 30, 1992, we received petitions filed in proper form by the following companies: Armco Steel Company, L.P.; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; Geneva Steel; Gulf States Steel Inc. of Alabama; Laclede Steel Company; Lukens Steel Company; LTV Steel Company, Inc.; National Steel Corporation; Sharon Steel Corporation; U.S. Steel Group (a unit of USX Corporation); and WCI Steel, Inc. In accordance with 19 CFR 353.12, petitioners, in varying combinations, allege that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (CRCS), and certain cut-to-length carbon steel plate (steel plate) from various countries are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that industries in the United States are being materially injured, or are threatened with material injury, by reason of those imports. For a list of specific cases filed against particular countries, the case number, and the petitioners for that case, see appendix I to this notice.

Petitioners have stated that they have standing to file their respective petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and because they filed the petitions on behalf of the U.S. industries producing the products that are subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, any of these petitions, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigations

The petitions cover four separate classes or kinds of merchandise, as follows:

(1) Certain hot-rolled carbon steel flat products;

(2) Certain cold-rolled carbon steel flat products;

(3) Certain corrosion-resistant carbon steel flat products;

(4) Certain cut-to-length carbon steel plate.

For complete descriptions of these products, see Appendix II to this notice.

United States Price and Foreign Market Value

In many of these petitions, petitioners provided multiple methodologies for calculating United States price (USP) and foreign market value (FMV). For each petition, given the statutory preference for price-to-price comparisons, we have analyzed only the most appropriate methodology among those included in the petition (in most cases, a comparison of USP derived from invoices or price quotations to a home market price) to determine whether or not there is reason to believe that the merchandise is being, or is likely to be, sold at less than fair value. For purposes of these initiations, no further adjustments were made to petitioners' calculations. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA. In addition, for those companies and products against which we are initiating a cost of production investigation (see below), we have also analyzed the allegations comparing USP to constructed value.

Petitioners' estimates of USP are based on either actual prices from invoices or quotes to U.S. customers, or IM-145 import statistics. If a petition included both types of USP estimates, we relied on actual prices or quotes, where possible. Where appropriate, petitioners adjusted delivered prices to reflect ex-factory prices.

Except for the petitions involving Poland and Romania, petitioners' estimates of FMV are based on actual price quotations to home market customers, home market price lists, published reports of domestic prices, or constructed value. Where appropriate, delivered prices were adjusted to reflect exfactory prices. In addition, petitioners adjusted these prices for differences in circumstances of sale and taxes, as appropriate.

Petitioners contend that FMV of Polish- and Romanian-produced imports subject to the respective investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. Pursuant to section 771(18) of the Act, Poland and Romania are considered to be NMEs and the Department has treated each as such in all previous proceedings (see, *e.g.*, Final Results of Administrative Review: Electric Golf Cars from Poland, 58 FR 10334 (March 25, 1992), and Preliminary Determination of Sales at Less than fair Value: Circular Welded Non-alloy Steel Pipe from Romania, 57 FR 17890 (April 28, 1992) (Steel Pipe from Romania)). Parties will have the opportunity to address these NME determinations in the respective investigations and provide relevant information and argument on them. In addition, parties will have the opportunity in each investigation to submit comments on whether FMV should be based on prices or costs in each NME (see, Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-plated Lug Nuts from the People's Republic of China, 57 FR 15052 (April 24, 1992)).

Because of the extent of central control in a NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters in each country. Only if individual NME exporters can demonstrate an absence of central control with respect to the subject merchandise, both in law and in fact, will they be entitled to separate, company-specific rates (see, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard).

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production, as valued in a market economy country. Absent evidence that the Polish and Romanian governments have selected which factories produce the subject merchandise for export to the United States, we intend to base FMV only on those factories in Poland and Romania, respectively, which are known to produce steel plate for export to the United States.

Petitioners calculated FMV for Poland and Romania on the basis of the factors of production. In valuing the factors of production, petitioners used several alternative countries as surrogates for Poland and Romania. For initiation purposes, we have accepted petitioners' choice of Argentina as having an economy comparable to Poland's and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. For Romania, we used petitioners' surrogate country data from Turkey, rather than from Algeria for purposes of the initiation because in the most recent determination involving a steel product from Romania, Steel Pipe from Romania, Turkey was determined to be the steel-producing country most comparable to Romania in terms of economic development from among the surrogate countries whose data were included in this petition.

Alleged dumping margins based on the methodologies analyzed are listed by country and product in appendix I.

Home Market Sales Below Cost of Production

Petitioners also allege that specific potential respondents in some of these investigations are selling the subject merchandise in their home markets at prices below their costs of production. These allegations are based on a comparison of company-specific home market prices with the cost of production (COP). COP was based on either the COP of an efficient U.S. producer adjusted for known differences in the country of production, and/or company specific information, when applicable, or on published reports detailing the costs of specific foreign producers, and on the company's financial statements, when applicable.

Based on the information presented, we have reason to believe or suspect that the home market sales of the following producers are being made at less than COP:

Country	Case	Producer(s)
Austria	Cold-rolled steel	Voest Alpine Stahl Linz.
Belgium	Steel plate	S.A. Cockerill Sambre.
Brazil	Cold-rolled steel	Usinas Siderúrgica de Minas Gerais, S.A. (USIMINAS).
Canada	Steel plate	Algoma Steel Corp., STELCO, Inc.
France	Hot-rolled steel	Usinor/Sacilor.
France	Cold-rolled steel	Usinor/Sacilor.
Italy	Hot-rolled steel	Ilva, S.p.A.
Italy	Cold-rolled steel	Ilva, S.p.A.
Italy	Steel plate	Ilva, S.P.A.
Korea	Hot-rolled steel	Pohang Iron & Steel Co.
Netherlands	Hot-rolled steel	Hoogovens Ijmuiden Verkoopkantor BV (Hoogovens).
Netherlands	Cold-rolled steel	Hoogovens.
United Kingdom	Cold-rolled steel	British Steel, PLC.
United Kingdom	Steel plate	British Steel, PLC.

Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we are initiating COP investigations with respect to the companies and products named above.

We have, however, rejected the following COP allegations: hot-rolled steel, CRCS, and steel plate from Brazil; cold-rolled steel, CRCS, and steel plate from Germany; cold-rolled steel, CRCS, and steel plate from Korea; and cold-rolled steel and steel plate from Spain. We have also reject COP allegations for one of the named producers of steel plate in Belgium, S.A. Foreges de Clabecq (Clabecq), and cold-rolled steel in Brazil, Cia Siderúrgica Paulista (COSIPA). Except for the allegation against Clabecq, these allegations have been rejected because the petitioners failed to supply adequate company-specific home market pricing data for the producers named in each allegation (*see, Al Tech Specialty Corp.* v. *U.S.*, 575

F.Supp. 1277 (CIT 1983)). Regarding Clabecq, we rejected the COP allegation because the COP did not exceed the home market price when COP was adjusted to company-specific costs. In accordance with 19 CFR 353.31(c)(i), petitioners will have until 45 days prior to the scheduled date of the preliminary determinations to perfect these allegations, and to make any additional COP allegations.

Initiation of Investigations and Postponement of Preliminary Determinations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegation.

We have examined the petitions and found that each complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of the named steel products from various countries are being, or are likely to be, sold in the United States at less than fair value. The specific investigations are identified in appendix I. Each investigation covers only one class or kind of merchandise from one country and is identified by a single case number.

In accordance with section 733(c) of the Act, the Department determines that these investigations are extraordinarily complicated by reason of one or more of the following: (1) The significant number and complexity of the transactions to be considered; (2) the novelty of the issues presented by reason of the large number of simultaneous investigations involving four different classes or kinds of steel products; and (3) the large number of firms whose activities must be investigated. We also determine that additional time is necessary for making our preliminary determinations. Accordingly, on the assumption that the parties concerned will cooperate in these investigations, we are postponing our preliminary determinations until not later than 210 days after the filing of the petitions, *i.e.*, January 26, 1993. If the parties concerned with a particular investigation are found not to be cooperative, we may issue our preliminary determinations not later than 160 days after the filing of the petitions.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by August 14, 1992, whether there is a reasonable indication that imports of hot-rolled steel, cold-rolled steel, CRCS, and steel plate from the named countries are materially injuring, or threaten material injury to, the respective U.S. industries. Any ITC determination that is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 20, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

Appendix I

Country	Product	Case No.	Petitioners	Estimated LTFV margin range (percent)	Estimated below Cop/CV-price margin range (percent)
Argentina	CR	A-357-808	A,B,Gu,I,L,N,S,U,W	43.90-51.58	N/A
Australia	CR	A-602-802	A,B,Gu,I,L,N,S,U,W	25.94	N/A
Australia	CRCS	A-602-803	A,B,Ge,Gu,I,L,N,S,U,W	19.07-37.94	N/A
Austria	CR	A-433-803	A,B,Gu,I,L,N,S,U,W	6.24-9.18	28.24-33.04
Belgium	HR	A-423-803	A,B,Ge,Gu,I,L,N,S,U,W	1.52-1.90	N/A
Belgium	CR	A-423-804	A,B,Gu,I,L,N,S,U,W	23.49	N/A
Belgium	Plate	A-423-805	B,Ge,GU,I,L,S,U	25.55	21.01
Brazil	HR	A-351-814	A,B,Ge,Gu,I,L,La,N,S,U,W	45.00-87.00	(1)
Brazil	CR	A-351-815	A,B,Gu,I,L,N,S,U,W	0.31-88.00	44.00
Brazil	CRCS	A-351-816	A,B,Ge,Gu,I,L,N,S,U,W	43.00	(1)
Brazil	Plate	A-351-817	B,Ge,Gu,I,Lu,S,U	53.00-109.00	(1)
Canada	HR	A-122-820	A,B,Ge,Gu,I,L,N,S,U,W	21.90-27.80	N/A
Canada	CR	A-122-821	A,B,Gu,I,L,N,S,U,W	33.20-58.30	N/A
Canada	CRCS	A-122-822	A,B,Ge,Gu,I,L,N,S,U,W	13.00-45.10	N/A
Canada	Plate	A-122-823	B,Ge,Gu,I,Lu,S,U	7.90-36.20	37.70-75.40
Finland	Plate	A-405-802	B,Ge,Gu,I,Lu,S,U	7.00-43.00	N/A
France	HR	A-427-806	A,B,Ge,Gu,I,L,La,N,S,U,W	5.16-20.94	7.76
France	CR	A-427-807	A,B,Gu,I,L,N,S,U,W	10.29-14.24	28.84
France	CRCS	A-427-808	A,B,Ge,Gu,I,L,N,S,U,W	6.02	N/A
France	Plate	A-427-809	B,Ge,Gu,I,Lu,S,U	5.64-27.94	N/A
Germany	HR	A-428-813	A,B,Ge,Gu,I,L,La,N,S,U,W	9.28-15.43	N/A
Germany	CR	A-428-814	A,B,Gu,I,L,N,S,U,W	33.29	(1)
Germany	CRCS	A-428-815	A,B,Ge,Gu,I,L,N,S,U,W	19.94-40.79	(1)
Germany	Plate	A-428-816	B,Ge,Gu,I,Lu,S,U	15.44-37.98	(1)
Italy	HR	A-475-805	A,B,Ge,Gu,I,L,La,N,S,U,W	11.03	27.73
Italy	CR	A-475-806	A,B,Gu,I,L,N,S,U,W	10.94	50.15
Italy	Plate	A-475-807	B,Ge,Gu,I,Lu,S,U	4.24-5.93	43.43
Japan	HR	A-588 824	B,Ge,Gu,La,S,U,W	3.76-10.32	N/A
Japan	CR	A-588-825	B,Gu,S,U,W	9.15-17.44	N/A
Japan	CRCS	A-588-826	B,Ge,Gu,S,U,W	6.79-18.19	N/A
Japan	Plate	A-588-827	B,Ge,Gu,Lu,S,U	2.71-14.70	N/A
Korea	HR	A-580-814	A,B,Ge,Gu,I,L,La,N,S,W	54.49-76.89	54.49-76.89
Korea	CR	A-580-815	A,B,Gu,I,L,N,S,U,W	30.99-41.45	(1)
Korea	CRCS	A-580-816	A,B,Ge,Gu,I,L,N,S,U,W	2.47-20.27	(1)
Korea	Plate	A-580-817	B,Ge,Gu,I,Lu,S,U	3.19-8.48	(1)
Mexico	CRCS	A-201-808	A,B,Ge,Gu,I,L,N,S,U,W	22.06-152.84	N/A
Mexico	Plate	A-201-809	B,Ge,Gu,I,Lu,S,U	48.42-49.25	N/A

Country	Product	Case No.	Petitioners	Estimated LTFV margin range (percent)	Estimated below Cop/CV-price margin range (percent)
Netherlands	HR	A-421-803	A,B,Ge,Gu,I,L,La,N,S,U,W	1.71	52.40-56.70
Netherlands	CR	A-421-804	A,B,Gu,I,L,N,S,U,W	1.86-8.43	31.11-45.60
Poland	Plate	A-455-802	B,Ge,Gu,I,Lu,S,U	62.10-73.80	N/A
Romania	Plate	A-485-803	B,Ge,Gu,I,L,S,U	87.80-101.80	N/A
Spain	CR	A-469-802	A,B,Gu,I,L,N,S,U,W	21.71-38.50	(1)
Spain	Plate	A-469-803	B,Ge,Gu,I,Lu,S,U	18.76-62.13	(1)
Sweden	Plate	A-401-805	B,Ge,Gu,I,L,S,U	19.34	N/A
Taiwan	CR	A-583-817	A,B,Gu,I,L,N,S,U,W	23.68-34.97	N/A
Taiwan	CRCS	A-583-818	A,B,Ge,Gu,I,L,N,S,U,W	12.61-45.05	N/A
United Kingdom	CR	A-412-813	A,B,Gu,I,L,N,S,U,W	13.04-23.02	34.26
United Kingdom	Plate	A-412-814	B,Ge,Gu,I,L,S,U	1.19-71.76	46.55

KEY:
PRODUCTS:
HR=Hot-rolled Carbon Steel.
CR=Cold-rolled Carbon Steel.
CRCS=Corrosion-Resistant Carbon Steel.
PLATE=Cut-to-Length Carbon Steel Plate.
N/A=Not Applicable—No COP allegation.
(1)=COP allegation rejected, as discussed in text of notice.
PETITIONERS:
A=Armco Steel Company, L.P.
B=Bethlehem Steel Corporation.
Ge=Geneva Steel.
GU=Gulf States Steel Inc. of Alabama.
I=Inland Steel Industries, Inc.
L=LTV Steel Co., Inc.
La=Laclede Steel Company.
Lu=Lukens Steel Company.
N=National Steel Corporation.
S=Sharon Steel Corporation.
U=U.S. Steel Group—a Unit of USX Corporation.
W=WCI Steel, Inc.

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below.

Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat products, of solid rectangular (other than square) cross section, or rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.000.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat products, of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of solid rectangular (other than square) cross section, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"),

or both chromium and chromium oxides ("tin-free steel").

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief) of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, of solid rectangular (other than square) cross section, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

[FR Doc. 92-17566 Filed 7-28-92; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-815]

Amendment of the Preliminary Determination in the Antidumping Duty Investigation of Certain Welded Stainless Steel Pipes From Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Ray Hampton, 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) 377-8830 or 377-0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

After publication of our preliminary determination (57 FR 27735, June 22, 1992), petitioners alleged that Jaung Yuann Enterprise Co., Ltd.'s (JYE) home market prices per metric ton were compared to its cost of production per kilogram. Petitioners also claimed that there was a misplaced decimal in JYE's interest rate and that ocean freight and insurance expenses should be converted from New Taiwan Dollars (NT$) into U.S. dollars. On July 6, 1992, counsel for respondent JYE filed comments on an alleged error in our calculations. Respondent's comments were not filed within the time frame specified by the Department and were, therefore, untimely.

The Department agrees with petitioners' allegations regarding the home market price and cost of production comparison and the misplaced decimal in the interest rate. However, it is not necessary to convert the ocean freight and insurance expenses from NT$ into U.S. dollars as these expenses should not have been deducted from the gross price to calculate the value-added tax. For price-to-price comparison only, we added to the U.S. price the amount of value-added tax that would have been collected if the merchandise had not been exported. After correcting these errors, the preliminary margin changed from the 3.58 percent published in the original determination to 17.50 percent. The Customs Service shall require a cash deposit or posting of a bond equal to JYE's amended estimated preliminary dumping margin of 17.50 percent. The cash deposit/bonding rate of "All Others" is now 8.07 percent.

Accordingly, consistent with proposed regulation 353.15(g) (which will codify existing practice), we are correcting the ministerial errors in the preliminary determination of this investigation. See 57 FR 1,131, 1,133 (Jan. 10, 1992) (to be codified at 19 CFR 353.15(g)).

This notice is published pursuant to 19 CFR 353.25.

Dated: July 21, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17863 Filed 7-28-92; 8:45 am]
BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910935-2137]

RIN 0693-AA78

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for Federal Information Processing Standard (FIPS) 21-3, COBOL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of Technical Interpretation No. 1 FIPS 21-3, COBOL.

SUMMARY: Technical Interpretation No. 1 pertains to the handling of invalid arguments in intrinsic functions for FIPS 21-3 COBOL. On November 25, 1991 (56 FR 59244), notice was published in the Federal Register that an interpretation for FIPS COBOL was under consideration. Comments were received from nine Federal agencies and one industry organization. None of the comments opposed the technical interpretation developed by NIST. All comments are available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Technical Interpretation No. 1 for FIPS 21-3, COBOL, is provided in this notice. The technical interpretation serves as additional specifications but requires no change to FIPS 21-3 which became effective on June 29, 1990 and which adopts voluntary industry standards, ANSI X3.23-1985 and ANSI X3.23-A-1989.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Kailey, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975-3259.

AUTHORITY: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Dated: July 23, 1992.

John W. Lyons,

Director.

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for FIPS 21-3, COBOL

Definition of the Problem: The following questions have been raised concerning invalid arguments being specified in intrinsic functions:

1. If it is syntactically detectable at compile time that a given intrinsic function argument violates a specified constraint rule for the function argument, must FIPS conforming compilers nevertheless process the specified intrinsic function as conforming source code?

2. If an intrinsic function argument references a data item whose data is the correct class and category (and all other

argument constraints for the function are correct) but the data item referenced by the argument contains invalid data, is it considered a constraint violation or an incompatible violation in FIPS COBOL?

3. If, at run-time, an intrinsic function argument violates an argument constraint specified in the standard (a violation of range or permissible value rather than a violation of class or category), does the phrase "the returned value for the function is undefined" mean that:

(a) The behavior of the program from that statement on is undefined; or

(b) The value returned from the function is undefined, but the program must continue to execute in accordance with the COBOL rules for transfer of control; or

(c) There is some other meaning concerning program execution continuation and transfer of control?

4. If the answer to the previous question is that the program must continue to execute after evaluation of a function whose argument violates argument constraints, does it mean that although the value returned is undefined the value must be consistent with the function type?

Discussion of the Issues

References: (1) ANSI X3.23–1985, page I–9, paragraph 1.6.

(2) ANSI X3.23–1985, page I–9, paragraph 1.7.

(85) ANSI X3.23–1985, page III–23, definition of Source Program.

(4) ANSI X3.23–1985, page IV–25, paragraph 4.4.

(5) ANSI X3.23–1985, page VI–70, paragraph 6.4.7.

(6) ANSI X3.23a–1989, page A–24, entry for page XVII–98.

(7) ANSI X3.23a–1989, page A–27, paragraph 1.2.2.

Reference 3 states that in X3.23–1985 the term source program "always refers to a syntactically correct set of COBOL statements." The first sentence of reference 1 states, "A conforming source program is one which does not violate the explicitly stated provisions and specifications of Standard COBOL." Thus, whether or not a violation of an explicitly stated argument constraint is detectable at compile time, if such a violation exists in a source program that program does not conform to Standard COBOL.

The third paragraph of reference 1 above states, "There are, in Standard COBOL, situations in which the results of executing a statement are undefined or unpredictable (see XVII–96, Undefined Language Element List). A COBOL source program which allows this to happen may nevertheless be a conforming program, although the resultant execution is not defined by Standard COBOL."

The last sentence of reference 7 above states, "If, at the time a function is referenced, the arguments specified for that reference do not have values that comply with the specified constraints, the returned value for the function is undefined." Reference 6 above placed this sentence on the Undefined Language Element List. Thus, according to reference 1 cited above, if a program allows a reference to a function whose argument does not have a value that complies with the constraints specified for that argument, the resultant execution of that program is not defined in Standard COBOL.

Reference 2 above elaborates further on this position by stating that, "The translation of a conforming source program by a conforming implementation and the subsequent execution of the resultant object program is defined only to the extent specified in Standard COBOL. However, the preceding statement does not imply that the program will be translated or executed successfully; translation and execution depends on other factors, such as * * * the date upon which the program operates." Therefore, even if the program that allows a reference to a function whose argument does not have a value that complies with the constraints specified for that argument is determined to be a conforming source program, the subsequent execution of the resultant object program still is not defined in Standard COBOL (reference 1, third paragraph).

Interpretation: The interpretation is that any time in a source program an intrinsic function argument constraint specification is violated, the returned value for the function is undefined and the resultant execution of that program also is undefined. This interpretation applies whether or not the argument constraint violation is detectable at compile time.

Specific responses to each of the questions stated in the Definition of the Problem above are as follows:

Question 1. A source program that is not a syntactically correct set of COBOL statements (reference 3) is not a conforming COBOL source program (reference 1). The translation of a nonconforming source program by a conforming implementation is not addressed and therefore is undefined in Standard COBOL.

Question 2. If the content of a data item referenced as an intrinsic function argument does not conform to the implicitly or explicitly specified attributes of that data item (reference 4), the stated provisions of Standard COBOL have been violated. If such a violation exists in a source program the resultant execution of that program is undefined in Standard COBOL (reference 1). Whether such a violation is categorized as an argument constraint violation or an invalid data violation (reference 5), the results of executing a program containing such a violation is undefined in Standard COBOL.

Question 3. If, at the time of reference, the value of a data item referenced as an intrinsic function argument does not comply with the specified constraints for that argument, the returned value for the function is undefined (reference 7), and therefore, the resultant execution of the program is undefined (references 1 and 2). The continued execution of the program in accordance with the rules for transfer of control (reference 5) is likewise undefined.

Question 4. This question is irrelevant since continued execution of the program is undefined. See the response to question 3.

Clarification of FIPS 21–3, COBOl. None.

[FR Doc. 92–17920 Filed 7–28–92; 8:45 am]
BILLING CODE 3510–CN–M

Public Meeting on U.S. Technical Participation in 9th Quadrennial Conference of the International Organization of Legal Metrology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcement of Pre-conference meeting prior to 9th Quadrennial Conference of the International Organization of Legal Metrology (OIML).

DATES: Ninth Quadrennial Conference of OIML, Athens, Greece, November 2–6, 1992. Pre-conference meeting, National Institute of Standards and Technology, Physics Building, room A 366, September 15, 1992 from 9:30 a.m. to 4 p.m.

SUMMARY: The National Institute of Standards and Technology will hold a public meeting to discuss U.S. technical participation in the 9th Quadrennial Conference of OIML. The principal focus will be on existing and proposed OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the

Recommendations and other relevant issues of the Conference.

The public meeting is open to all interested parties. Participants with an expressed interest in particular topics may obtain copies of the Conference technical agenda, including copies of the Recommendations to be ratified. A written summary of oral presentations by interested parties should be arranged and scheduled beforehand. Written comments are welcome at any time.

FOR FURTHER INFORMATION CONTACT: Samuel E. Chappell, Chief; Office of Standards Management; National Institute of Standards and Technology; Gaithersburg, MD 20899; telephone 301/975–4023; fax 301/963–2871.

SUPPLEMENTARY INFORMATION: OIML is a treaty organization in which the United States and 48 other nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce and for monitoring and maintaining public health and safety. The harmonized results are to promote international trade of affected instruments and products.

Nineteen Recommendations will be presented for ratification by the Conference in these categories: Those already approved by the International Committee of Legal Metrology (CIML) between 1989 and 1991 and those that will be approved at a CIML meeting just prior to the Conference. These Recommendations and the OIML-member nations holding the responsible secretariat are as follows:

Category (1)

R 95 Ships' tanks—General requirements (Romania).
R 96 Measuring container bottles (France).
R 97 Barometers (United Kingdom).
R 60 Metrological regulations of load cells (USA).
R 98 High-precision line measures of length (Russia).
R 99 Instruments for measuring vehicle exhaust emissions (Germany).
R 100 Atomic absorption spectrometers for measuring metal pollutants in water (USA).
R 101 Indicating and recording pressure gauges, vacuum gauges and pressure-vacuum gauges with elastic sensing elements (ordinary instruments) (Russia).
R 76 Nonautomatic weighing instruments (France, Germany).
R 102 Sound calibrators (People's Republic of China).
R 103 Pure-tone audiometers (Germany).
R 104 Measuring instrumentation for human response to vibration (Germany).

Category (2)

—Reference standard liquids for the calibration and verification of viscometers (Russia).
—Pressure gauges and vacuum gauges with elastic sensing elements (Russia).
—Refractometers for the measurement of the mass concentration of fruit juices (Germany).
—Direct mass flow measuring systems for quantities of liquids (USA).
—Discontinuous totalizing automatic weighing instruments (United Kingdom).
—Automatic rail weighbridges (United Kingdom).
—Electronic weighing instruments (USA).

Dated: July 23, 1992.

John W. Lyons,

Director.

[FR Doc. 92–17880 Filed 7–28–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Statement of Organization, Practices and Procedures

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

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101–627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has revised its SOPP, which was originally published in the **Federal Register** on June 15, 1977. Interested parties may obtain a copy of the Mid-Atlantic Council's revised SOPP by contacting John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building room 2115, 300 South New Street, Dover, DE 19901–6790; telephone (302) 674–2331.

Dated: July 23, 1992.

Richard H. Schaefer,

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

[FR Doc. 92–17843 Filed 7–28–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Application of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

July 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to apply a limit.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to apply the limit on cotton printcloth and sheeting in Categories 313/315 established in the bilateral textile agreement with the former Union of Soviet Socialist Republics to the twelve successor states—Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova,

Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

A copy of the bilateral agreement with the former Union of Soviet Socialist Republics is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 61233, published on December 2, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns counting imports of cotton textile products in Categories 313 and 315, produced or manufactured in Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1984); pursuant to the Bilateral Textile Agreement of December 28, 1989 between the Governments of the United States and the former Union of Soviet Socialist Republics (Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 31, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton sheeting and printcloth in Categories 313/315, produced or manufactured in the 12 successor states to the former Union of Soviet Socialist Republics, cumulatively, and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of 25,000,000 square meters [1] of which not more than 4,000,000 square meters shall be in Category 315.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the bilateral agreement between the Governments of the United States and the former Union of Soviet Socialist Republics.

Also, effective on July 31, 1992, you are directed to cancel the directive issued to you on November 25, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes a limit on cotton textile products in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during 1992.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–17868 Filed 7–28–92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

July 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting certain limits.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by the application of swing. Category 300/301 is being decreased to account for the increases to the other categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 23, 1992, you are directed to amend further the directive dated November 22, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
218	10,785,167 square meters.
300/301	3,228,321 kilograms.
338/339	2,330,989 dozen of which not more than 1,757,457 dozen shall be in Categories 338–S/339–S [2].
352	1,742,829 dozen.
359–C [3]	514,142 kilograms.
617	15,663,769 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Categories 338–S/339–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17866 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Thursday, August 27, 1992, beginning at 9 a.m. and ending at 5 p.m.; and Friday, August 28, 1992, beginning at 8:30 a.m. and ending at 12 noon.

ADDRESS: Roger Williams University, in the Architecture Building, Thesis Room, One Old Ferry Road, Bristol, Rhode Island 02809.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to assist with a series of special assessments and produce a study pertaining to loan simplification.

The Advisory Committee will meet in Bristol, Rhode Island on August 27, 1992, from 9 a.m. to 5 p.m., and on August 28, from 8:30 a.m. to 12 noon.

The proposed agenda includes (a) a reauthorization summary and the Department of Education's implementation of reauthorization changes; (b) discussions of a loan simplification study and the proposed examination of early eligibility determination; and (c) an Advisory Committee planning session for the upcoming year's agenda including a regulatory update.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 22, 1992.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 92-17809 Filed 7-28-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(AU)-8, for the transfer from Australia to the United Kingdom of a damaged fuel element for repair and subsequent return to Australia. The fuel element contains 141.17 grams of uranium enriched to 60 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 23, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-17916 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Financial Assistance Award to the State of Wyoming (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of a noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), (C) and (F) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a forty-eight month Grant to the State of Wyoming, Cheyenne, WY in the amount of $306,950.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone (304) 291-4386, Procurement Request No. 21-92MC29424.000.

SUPPLEMENTARY INFORMATION: The purpose of this grant is to provide the State of Wyoming with resources sufficient to ensure that an in-depth review of the environmental aspects of U.S. DOE-METC field sites in Wyoming is performed, that known clean-up technologies are evaluated in relation to the environmental situation at each of the field sites, and that independent State oversight of clean-up operations at the field sites is conducted to ensure compliance with State statutes, regulations, and Applicable or Relevant and Appropriate Requirements (ARARs).

Dated: July 22, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-17918 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Financial Assistance Award to the University of Kentucky (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) and (D), the DOE, Morgantown Energy Technology Center, gives notice of its plans to renew a Grant to the University of Kentucky, Lexington, Kentucky, in the amount of $26,800.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4386, Procurement Request No. 21–92MC28203.503.

SUPPLEMENTARY INFORMATION: The University of Kentucky will cost share 25 percent of the effort or $6,800. The pending award is based on an unsolicited application for assistance with the publication of proceedings from the Eastern Oil Shale Symposia held each year in Lexington, KY. The University of Kentucky annually hosts the Eastern Oil Shale Symposium in Lexington, Kentucky, to provide a forum for individuals conducting research in eastern oil shale to meet, to present, and discuss the results of their work. DOE's support of this activity will enable the University to publish and circulate the symposium results to the general public.

Dated: July 22, 1992.

Louie L. Calaway,

Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–17917 Filed 7–28–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Anadarko Trading Co. Docket No. 92–76–NG, Anthem Energy Co., L.P., Docket No. 92–81–NG, Prairielands Energy Marketing, Inc., Docket No. 92–82–NG, Mercado Gas Services, Inc., Docket No. 92–85–NG, Access Energy Corp. Docket No. 92–86–NG, Pacwest Resources, Inc., Docket No. 92–87–NG, BP Gas Inc., Docket No. 92–89–NG, Amoco Energy Trading Corp. Docket No. 92–91–NG; Applications for Blanket Authorization to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. The applicants request blanket authorization to import and/or export natural gas from and to foreign countries on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline or LNG processing facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, August 28, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.G. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commentor, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authorities. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protest, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided.

such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of facts, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on July 22, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket no.	Two-year maximum			Comments
		Import volume	Export volume	Import/export volume*	
6/22/92	Anadarko Trading Company (92-76-NG)	30.0 Bcf			Imports from Canada.
6/24/92	Anthem Energy Company, L.P. (92-81-NG)		65.7 Bcf		Exports to Mexico.
6/25/92	Prairielands Energy Marketing, Inc. (92-82-NG)	50.0 Bcf	50.0 Bcf		Imports/Exports from/to Canada.
7/02/92	Mercado Gas Services, Inc. (92-85-NG)		43.8 Bcf		Exports to Mexico and other foreign countries.
7/06/92	Access Energy Corporation (92-86-NG)		365.0 Bcf		Exports (including LNG) to any foreign country.
7/07/92	Pacwest Resources, Inc. (92-87-NG)	146.0 Bcf			Imports from Canada.
7/07/92	BP Gas Inc. (92-89-NG)		50.0 Bcf		Exports to Mexico.
7/10/92	Amoco Energy Trading Corporation (92-91-NG)	300.0 Bcf			Imports from Canada.

[FR Doc. 92-17915 Filed 7-28-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No.92-88-NG]

Nicholson & Associates, Inc.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 7, 1992, of an application filed by Nicholson & Associates, Inc. (Nicholson) for blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year term beginning with the date of first delivery. Nicholson intends to use existing pipeline facilities, and will submit quarterly reports of its transactions. Additionally, Nicholson requests a shortened notice period for its application.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 28, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Nancy M. Ellett, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G-064, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4669.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Nicholson, a Washington corporation with its principal place of business in Bellevue, Washington, is a marketer of natural gas in the United States. Nicholson proposes to import gas, acting either on its own behalf or as an agent for others, for sale to a variety of purchasers in U.S. markets, including industrial end users, agricultural users, electric utilities, pipelines and distribution companies. The gas to be imported by Nicholson will be supplied by individual producers, producer groups, associations and pipeline companies, and the terms of the supply contracts will depend upon current market conditions for the gas.

In requesting a shortened notice period for its application, Nicholson states that its pending natural gas sales arrangements are dependent upon import authorization from DOE. DOE has determined that this reason is insufficient to support a shortened notice period, and, consequently, the request is denied.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Nicholson's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17919 Filed 7–28–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Special Research Grant Program Notice 92–18: Subsurface Science Program

AGENCY: Office of Energy Research, Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for Special Research Grants in support of research on the origins of microorganisms in the deep subsurface. This is a coordinated, multidisciplinary program directed towards determination of the origins of microorganisms that occur in deep sediments and geological formations with emphasis on field investigations. Included is the refinement of innovative concepts for investigating the survival, adaptation, and physiological capabilities of these microorganisms, provided that such techniques can be integrated rapidly into a field program. Emphasis is on collaborative, interdisciplinary research that draws on the fields of microbiology, geology, geochemistry, hydrology, microbial ecology, and molecular biology.

The major goals of the program are (1) to determine the distinctive physiological mechanisms and environmental conditions by which microorganisms are maintained in the deep subsurface for long periods and (2) to determine the distinctive physiological mechanisms and environmental conditions by which microorganisms are transported to the deep subsurface.

DATES: Formal applications submitted in response to this Notice must be received by 4:30 p.m., EDT, November 16, 1992, to be accepted for merit review in January 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program notice 92–18 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Mail Stop G–236, Washington, DC 20585, Attn: Program Notice 92–18. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Frank J. Wobber, Office of Health and Environmental Research, ER–74 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903–5324.

SUPPLEMENTARY INFORMATION: To achieve the two major goals described in the Summary (1.0, 2.0), priority research areas (1.1–2.4) have been identified and are designated by number, as follows:

1.0 Goal 1: Determination of distinctive physiological mechanisms and environmental conditions by which microorganisms are maintained in the subsurface for long periods.

1.1. Adaptation mechanisms or evolutionary changes that have occurred in subsurface microorganisms, and the influence of hydrological, geochemical, and geological conditions on microbial evolution.

1.2 Genetic and physiological characteristics of microorganisms that are responsible for their long-term maintenance in subsurface environments.

1.3 Hydrogeological and geochemical conditions that influence survival of microorganisms and microbial communities.

1.4 *In situ* microbial activity, including substrate metabolism and nutrient requirements of subsurface microorganisms, as it specifically relates to long-term adaptation, evolution, or survival. (Activity related to contaminant degradation is excluded.)

2.0 Goal 2: Determination of distinctive physiological mechanisms and environmental conditions by which microorganisms are transported to the deep subsurface over long periods.

2.1 Rates and paths of transport of microorganisms in subsurface sediments and lithologies.

2.2 Hydrogeological and geochemical conditions that control transport of microorganisms in subsurface porous media.

2.3 Microbial community dynamics, physiology, and cell morphology, as they relate to transport through porous media.

2.4. Determination of the time of deposition of microorganisms in a subsurface environment, through the utilization of molecular clocks, biochemical markers, or geological dating methods.

When submitting applications, the research area that most closely relates to the proposed research must be indicated on the face of the application and in the application by referring to the appropriate number (1.2, 2.1, etc.). The Project Description in the application must contain a section that describes the relationship of the proposed research to the stipulated research area and goal. Alternative research areas may be considered, but they must be consistent with the overall theme of this solicitation and with the priorities of the Program, as described in the Program Plan document (see below). These should be designated as "0.0". Research on development of advanced techniques must address a specific goal and research area as part of an experimental program and not in isolation. Applicants that propose to conduct field work must provide details of site requirements and estimated costs in an Appendix A see below).

A DOE Program Plan, which provides further details on the rationale, goals, and research priorities of this Program, has been prepared. Anyone considering submission of an application is strongly encouraged to review this document before preparation of the formal application. A copy of the Program Plan may be obtained by calling (301) 903–4208.

In 1985, the DOE (OHER) initiated research within the Subsurface Science Program (SSP) to investigate the abundance, diversity, and physiology of microorganisms in deep subsurface environments. One of the motivations for this research was the need for efficient and cost-effective technologies for dealing with the contaminants in subsurface sediments and groundwater systems at DOE sites. One possible strategy for clean-up of these sites is *in situ* bioremediation, in which the physiological processes of microorganisms are utilized to degrade organic chemicals and immobilize inorganic contaminants, such as heavy metals. However, in order to exploit such technologies in the long term, it is necessary to obtain fundamental information on subsurface microorganisms, their physiological capabilities, and the environmental factors that control their distribution in the subsurface. Such research can provide information that is critical not only for the development of bioremediation strategies, but also for a basic scientific understanding of the occurrence, diversity, and ecology of microorganisms in a relatively unexplored and inaccessible environment, the terrestrial deep subsurface biosphere.

Under the auspices of the SSP, drilling and sampling was conducted at four primary sites: the Savannah River site on the Southeast Coastal Plain in South Carolina, the Idaho National Engineering Laboratory site on the Snake River Plain of Southeast Idaho, the Hanford site at the Pasco Basin in South Central Washington, and in the Nevada Test Site tunnels. Techniques were developed for aseptic sampling of subsurface microorganisms, and fundamental information was obtained on the presence, distribution, and physiological characteristics of these microorganisms. This was accomplished by collaborative, multidisciplinary, and multi-institutional groups of investigators; this "team" approach will continue to be an organizational feature of this program, although some turnover in individual investigators is expected, as a result of evolving program priorities and merit review.

Major findings of this research were that diverse assemblages of microorganisms existed in the subsurface and that some of these organisms differed from known terrestrial and aquatic bacteria. These observations have led to fundamental questions concerning the survival and physiological characteristics, transport properties, and evolutionary history of these organisms. The detection of microorganisms in aquifers below confining clay layers, in deeply buried subsoils, and in thick vadose zone sediments, where transport would be severely limited, suggests that some microorganisms have survived for long periods, perhaps since deposition of the original sediments. Exploratory research of an isolated, deeply buried structural basin was initiated early in 1992 to determine whether microrganisms were present, and thus would have survived for long periods (relates to Goal 1.0). Preliminary research to transport of microorganisms (Goal 2.0) was completed at the Savannah River site in 1990.

A critical component of this new research initiative is the selection of appropriate sites for testing hypotheses. To establish that microorganisms were entrapped at the time of sediment deposition, systems that have been sequestered from the surface for long periods (e.g., thousands to millions of years) are required for eliminating transport as a possible mechanism for introduction of microorganisms. Examples of such sites are deep isolated basins, deep confined aquifers, and vadose zone sediments where there is negligible vertical recharge from overlying sediments. To investigate whether transport is a dominant source of microorganisms, sites with well characterized flow paths within confined aquifers and studies of deep vadose zone sediments, such as buried subsoils, may be necessary.

The DOE anticipates that additional drilling and sampling will be conducted, either by taking advantage of drilling initiated by other parties or through the establishment of program-dedicated field sites. The DOE describes generic sites in the Program Plan. Applicants who intend to include field sampling in their research applications must describe their field site requirements in a separate appendix A. Appendix A must also contain an estimate of costs for field sampling, which should not be included in the application budget. Field research design and protocols should be generally consistent with site properties stipulated by the DOE. Site properties not identified by DOE that the investigator considers essential to conduct the research, must be satisfactorily justified.

It is anticipated that approximately $2.5 million will be available for grant awards during FY 1993, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $20,000 per year up to $300,000 per year (total costs with terms from 1 to 3 years). Most awards are in the $80,000 to $125,000 per year (total costs) range for 3 years. Similar award sizes are anticipated for new grants.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the ER Application and Guide for the Special Research Grant Program and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301) 903–4208. Instructions for

preparation of an application are included in the application kit. The Catalog of Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on July 20, 1992.

D.D. Mayhew,

Deputy Director for Management Office of Energy Research.

[FR Doc. 92-17924 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Decision To Sign Proposed Billing Credits Contracts

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Decision. BPA File No.: BCR-8. BPA announces its decision to sign Billing Credit Contracts for Generation Activities, Conservation Activities, and Customer System Efficiency Improvements (CSEI) in response to the BPA Billing Credit Solicitation.

SUMMARY: BPA, in compliance with its Billing Credits Policy, as amended August 30, 1984 (48 FR 20275), and its Billing Credit Solicitation July 1990, signed three contracts with three public bodies or cooperative utilities for a proposed conservation contract, a proposed CSEI contract, and proposed generation contract.

BPA signed a conservation contract for a heat pump project with Coos-Curry Cooperative. This project will provide for the installation of heat pump heating systems in weatherized homes that have forced-air electric heating systems.

Also pursuant to its Billing Credits Policy, BPA has signed a contract with Tacoma City Light for a CSEI project. This CSEI project proposes to increase the production capability of two hydroelectric resources by improving the efficiency of turbines located at the project sites.

In addition, BPA has signed a generation contract with Emerald People's Utility District for a biomass project at a publicly owned landfill site.

The Administrative Record for BPA's Billing Credit Solicitation contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes two appendices: Appendix A—Billing Credit Solicitation, and Appendix B—Issue Resolution Log. Addendum One of the Administrative Record—Customer System Efficiency Improvements Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits for these projects are determined. Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined. Addendum Three of the Administrative Record—Generation Proposes Contract Development, provides specific information about the generation projects and how billing credits are determined for these projects.

BPA announced its intent to sign the conservation contracts, the availability to the contracts, and Addendum Two in a **Federal Register** notice (57 FR 9250). These documents were available for review for 30 days.

BPA announced its intent to sign the CSEI contracts, the availability of the contracts, Draft Administrative Record, appendices, Addendum One and Amendment A to Addendum One in two **Federal Register** Notices (57 FR 1161 and 57 FR 9250). These documents were available for review for 30 days.

BPA announced its intent to sign the generation contract, the availability of the contract, the Draft Administrative Record, appendices, and Addendum Three in one **Federal Register** notice (57 FR 22212). These documents were available for review for 30 days.

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and addenda.

DATES: Payment or credits will not be made or granted until October 27, 1992.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific Conservation, CSEI, Generation Billing Credit Contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503-230-3478 in Portland, or toll-free 800-622-4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503-230-4551

Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-465-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-2518

Ms. Carol S. Fleischman, Spokane District Manager, Room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-3279

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509-662-4377

Mr. Terence G. Esvelt, Puget Sound Area, Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206-553-4130

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 508-522-6226

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208-334-9137

Ms. Ruth Bennett, Idaho Falls Acting District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706

SUPPLEMENTARY INFORMATION:

I. Background

BPA is self-financing power marketing agency within the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northern Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839 (c) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839b(1). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. After receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA then developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average megawatts of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts.

III. Description of the Conservation Proposals

Thirty-seven conservation proposals representing twenty-six public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Thirteen proposals were withdrawn, three utilities withdrew from participation in group-sponsored proposals, and some proposals were rejected. Conservation projects include measures in the residential, commercial, industrial, and agricultural sectors to reduce electric power consumption or increase production. Conservation projects include residential weatherization, lighting retrofit, institutional and industrial energy conservation measure, municipal water system improvements, heat pump installation, and removal of irrigation pumps. These measures reduce electric power consumption or increase production. Also, BPA released a previous **Federal Register** Notice announcing the signing of four conservation contracts on May 27, 1992.

BPA has signed a contract with this public body for the following conservation project.

1. Coos-Curry Cooperative—Heat Pump Proposal

This project meets the qualifications for billing credits. This action is categorically excluded from the procedural requirements of the National Environmental Policy Act (52 FR 47669) under categorical exclusion determination dated April 18, 1991, July 3, 1991, and November 1, 1991. Therefore, BPA signed a contract with that same customer.

IV. Description of the CSEI proposals

Twenty-four CSEI proposals representing 30 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. CSEI projects include voltage modifications, reconductoring, transformer replacements, and other system improvements undertaken to reduce electric power consumption or losses as a result of an increase in the efficiency of electric use, production, transmission or distribution. Also, BPA released a previous **Federal Register** Notice announcing the signing of one CSEI contract on May 27, 1992.

BPA has signed a contract with this public body for the following CSEI project:

1. Tacoma City Light—Cushman and La Grande Turbine project—a turbine improvement project.

This project meets the qualifications for billing credits. This action is categorically excluded from the procedural requirements of the National Environmental Policy Act (52 FR 47669) under categorical exclusion determinations dated April 18, 1991, July 3, 1991, and November 1, 1991. Therefore BPA signed a contract with that same customer.

V. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogenerative projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria.

BPA has signed a contract with this public body for the following generation project:

1. Emerald Public Utility District—Short Mountain project—a biomass project.

BPA signed this contract based on the analysis in the environmental assessment (DOE/EA 0551). In that analysis, DOE determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, the preparation of an environmental impact statement is not required and DOE issued a Finding of No Significant Impact.

VI. Methodology for Determining Conservation Billing Credits

The payment of billing credit (BC) will be calculated by using the following formula: $BC=(AC-PF)\times Savings\times C_s$. As shown in Exhibit F of the contracts, alternative cost (AC), minus the Priority Firm (PF) rate, times the savings from the measures, times the cost share percentage (C_s), equals BC.

VII. Methodology for Determining Generation Billing Credits

The payment or billing credit (BC) for this Customer will be calculated and paid monthly as follows:

As Emerald PUD is a Metered Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be equal to the lesser of the Alternative Cost (AC) or Net Cost (NC) multiplied by the monthly amounts of estimated firm energy as specified in the contract, less the amount of Priority Firm (PF) Rate dollars the Customer avoids paying as a result of the Billing Credit Resource. The estimated firm energy is compared to the actual metered generation at the end of each year, and a "true-up" payment is made by the appropriate party.

VIII. Materials Available

Copies of the Billing Credits Policy, the Draft Administrative Record, its appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement Office. Refer to the "For Further Information Contact" section of this notice.

Issued in Portland, Oregon, on July 20, 1992.

John S. Robertson,

Deputy Administrator.

[FR Doc. 92-18041 Filed 7-27-92; 1:33 pm]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Intention To Prepare a Revised Draft Environmental Impact Statement

July 22, 1992.

The Federal Energy Regulatory Commission (FERC) has received comments on the Draft Environmental Impact Statement (DEIS) for the Kingsley Dam, FERC No. 1417 and the Keystone Dam, FERC No. 1835 (Platte River Projects). The two hydropower projects are located on the Platte River in Nebraska.

The FERC staff has reviewed the comments and determined that a revised DEIS will be prepared. The revised DEIS will address the substantial amount of new information filed subsequent to the preparation of the DEIS and broaden the treatment of alternatives analyzed.

Scoping Meetings

FERC staff will conduct scoping meetings in Nebraska to review the scope and the alternatives to be assessed in the revised DEIS. The place and time of these meetings will be announced in a subsequent notice.

Procedures

The purpose of the notice is to invite all interested individuals, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the revised DEIS. Anyone who has views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. The closing date for comments will be 30 days after the scoping meetings.

All comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Kingsley Dam and Keystone Dam Projects, Nebraska, Project Nos. 1417 and 1835.

All those that are formally recognized by the Commission as intervenors in the Kingsley Dam and Keystone Dam Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission to serve a copy of the document on each person whose name is on the official service list.

For further information please contact S. Ronald McKitrick at (202) 219–2783.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17842 Filed 7–28–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4158–8 and EPA Project Number SE 87–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Colmac Energy, Inc.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on June 28, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to Colmac Energy, Inc. for the construction and operation of a 49 MW biomass-fired power plant to be located in Riverside County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: 12.0 lbs/hr or 20 ppm of SO2, 7.5 lbs/hr or 0.01 gr/dscf of TSP, 45 lbs/hr or 173 ppm of CO, and 30 lbs/hr or 70 ppm of NO_x all 3-hr averages.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1244 or FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: Baghouse for TSP, limestone injection for SO2, and ammonia injection (SNCR) for NO_x.

DATES: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 28, 1992.

Dated: July 20, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92–17903 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4158–9 and EPA Project Number SAC 90–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Unocal Corporation

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 21, 1992 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to Unocal Corporation to expand Unocal's existing agricultural nitrogen products plant in West Sacramento, California. The permit is subject to certain conditions, including an allowable emission rate for NOx as follows: from the tail gas reactor, the more stringent of 29.77 lbs/hr, 89 ppm, or 1.2 lbs/ton of acid, 3-hour average; from the startup boiler, 3.83 lbs/hr or 40 ppm, 3-hr average.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Fransciso, CA 94105, (415) 744–1244 or FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: chilled absorption and selective catalytic reduction on the nitric acid plant. Low NOx burners on the startup boiler.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 28, 1992.

Dated: July 20, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92–17902 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4158–7]

Solicitation for Research Grant Proposal—1993 Exploratory Research Grants

AGENCY: U.S. Environmental Protection Agency.

ACTION: General research grant solicitation.

SUMMARY: The U.S. Environmental Protection Agency (EPA), through its Office of Exploratory Research (OER) is seeking grant applications to conduct

exploratory environmental research in biology, chemistry, physics, engineering, or socioeconomics. Investigations are sought in these research disciplines which focus on any aspect of pollution identification, characterization, abatement or control, or address the effects of pollutants on the environment. In addition, research is sought on environmental policy and its social and economic consequences.

This solicitation only concerns the research grants administered by EPA's Office of Exploratory Research, and outlines procedures for receiving grant assistance from that office.

In addition to this general annual solicitation, applications are sought periodically through more narrowly defined proposal requests, referred to as Requests for Applications (RFA). While this document does not contain any RFA solicitations, it does provide an announcement of tentative RFA titles and approximate issue dates for each proposed RFA.

The main purpose of OER's Research Grants Program is to support advanced research in the environmental sciences, engineering and economics at U.S. academic institutions. The principal products sought are high quality scientific and technical articles in referred technical journals.

The Application

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/ Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from: U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M Street, SW., Washington, DC 20460, (202) 260–9266.

Each application will consist of the Application for Federal Assistance Form (Standard Forms 424 and 424A) and separate sheets providing the budget break-down for each year of the project, resumes for the principal investigator and co-workers, abstract of the proposed project, and a project narrative. All certification forms (drug-free workplace, etc.) must be signed and included with the application.

Special Instructions

Proposed projects must be investigative research which advances the state of knowledge in the environmental sciences and technology. Proposals will not be accepted that are routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

The following special instructions apply to all applicants responding to this solicitation:

- Applications must be identified by printing "OER–93" in the upper right hand corner or block 10 of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.
- A one page abstract must be included with the application.
- The project narrative section of the application must not exceed twenty-five 8½×11 inch, consecutively numbered pages of standard type (10–12 characters per inch), including tables, graphs and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information/ Kit:

(1) Description of Project.
(2) Objectives.
(3) Results or Benefits expected.
(4) Approach.
(5) General Project Information.
(6) Quality Assurance (If needed).

Attachments, appendices, and reference lists for the narrative section may be included, but are within the 25 page limitation.

Items not included under the 25 page limitation are the SF–424 and other forms, budgets, resumes, and the abstract.

Resumes must not exceed two consecutively numbered pages for each principal investigator and should focus on education, positions held and most recent or related publications.

Itemized budgets, including budget justifications must not exceed 5 consecutively numbered pages (excluding budget information on the SF–424 forms.)

Applications not meeting these requirements will not be forwarded to reviewers without corrections. Applicants will be notified of deficiencies and requisite changes will be requested.

Application Submission/Closing Dates

To be considered, the original and eight copies of the application must be received by EPA's Grant Operation Branch no later than close of business on the closing date. Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF–424, should be sent to the Grants Operation Branch. Informal, incomplete or unsigned proposals will not be considered. The application must be sent to: U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M Street, SW., Washington, DC 20460.

For overnight express mail, the address is: U.S. Environmental Protection Agency, Grants Operation Branch, Fairchild Building, room 801, 499 South Capitol Street, SW., Washington, DC 20460, (202) 260–9266.

Closing dates for all applications responding to this solicitation are February 1, 1993 and August 2, 1993.

Guidelines and Limitations

The typical grant issued by OER is for a total cost of approximately $100,000 per year for two or three years. Funding levels range from a minimum of about $40,000 to approximately $150,000 per year. All budget costs and justifications, particularly requests for equipment, will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged, as are funding requests substantially lower than $150,000 per year. Subcontracts for research to be conducted under the grant should not exceed approximately 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

The following eligibility requirements apply to both the general solicitation and targeted announcements (RFA's).

Academic and nonprofit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Potential applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contract EPA's Grants Operation Branch at (202) 260–9266.

Federal agencies and Federal employees are not eligible to participate in this program.

Review and Selection

All grant applications are initially

reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists, engineers and economists who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity).
- Qualifications of the principal investigator and staff including knowledge of relevant subject areas.
- Utility of the research including potential contribution to scientific knowledge in the environmental area.
- Availability and adequacy of facilities and equipment.
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary statement of the scientific review and recommendation of the panel is provided to each applicant.

Grants are selected by EPA on the basis of technical merit, program balance and budget.

Funding Mechanism

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

Contacts

Applicants may telephone the OER info-line for further information on schedules and review processes. The number is (202) 260–7474. Applicants with additional questions may contact the appropriate individuals identified in Table I. Their address is: U.S. Environmental Protection Agency, Office of Exploratory Research (RD–675), 401 M Street, SW., Washington, DC 20460.

TABLE I: CONTACTS FOR THE GENERAL SOLICITATION

Discipline	Contact	Phone number (prefix 202)
Biology	Clyde Bishop	260–5727
Chem/Physics of Air	Deran Pashayan.	260–2606
Chem/Physics of Water/Soil.	Louis Swaby	260–7453
Engineering	Louis Swaby	260–7453
Socioeconomic	Robert Papetti	260–7473

Minority Institution Assistance

Preapplication assistance is available upon request from potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges or Universities (HBCUs) or the Hispanic Association of Colleges and Universities (HACUs).

The application Form SF–424, instructions, subject areas, and review procedures are the same as those for the general grants program.

FOR FURTHER INFORMATION CONTACT: Virginia Broadway, U.S. Environmental Protection Agency (RD–675), 401 M Street, SW., Washington, DC 20460, (202) 260–7664.

Targeted Grants

The Office of Exploratory Research addresses specific research topics which appear to merit extra emphasis or special attention by issuing a separate RFA for each such topic. The RFA is a mechanism by which a formal announcement is released describing a high priority initiative in well defined scientific areas.

Applicants are invited to submit research applications in response to an RFA (for a limited number of grants) using the Standard Application for Federal Assistance Form SF–424 and other forms described in the Grant Application Kit. One copy of the application with original signatures plus eight copies should be mailed directly to the Grants Operations Branch.

The deadline for receipt of applications is identified in the RFA announcement.

As in the case of the general grants program, an application for a targeted grant (RFA) is only considered when a fully developed proposal is submitted. Special guidelines and limitations tailored to each RFA will be published in the individual RFA announcements.

Unless otherwise identified in individual RFAs, procedures, guidelines and limitations are the same for grants issued under the general and targeted grants programs.

OER does not expect to issue any new RFA's for Fiscal Year 1993. Superfund grants, which in the past have been awarded via the RFA mechanism, will be awarded under this general solicitation to successful applications which focus on the identification, remediation, and monitoring of Superfund sites.

Interested readers are reminded that an RFA in health, entitled "Biomarkers of Toxic Pollutants in Human Health—HLT–01–92" was issued in January, 1992, and has a second closing date of October 15, 1992. A copy of this announcement can be obtained by calling (202) 260–7445, or from the December 13, 1991 issue of the **Federal Register** (56 FR 65059). Questions concerning the RFA should be addressed to Clyde Bishop at (202) 260–5727.

Applications in the environmental health program are solicited by RFA only. Applications not responding to a specific RFA in the environmental health area will be returned to the applicant without further consideration.

Dated: July 22, 1992.

Robert A. Papetti,

Director, Research Grants Staff, Office of Exploratory Research.

[FR Doc. 92–17900 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4158–6]

National Environmental Education Advisory Council; Public Meeting

Notice is hereby given that the National Environmental Education Advisory Council will hold its second meeting on August 27–28, 1992, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC. The meeting is expected to be held from 9 a.m.–5 p.m. on August 27th and from 9 a.m.–3 p.m. on August 28th.

The Advisory Council was established pursuant to section 9 of the National Environmental Education Act of 1990 (Pub. L. 101–619) to advise the Administrator of the U.S. Environmental Protection Agency (EPA) on the implementation of the Act. The first meeting of the Council was held in February 1992. Minutes of this meeting are available to the public upon request.

The purpose of the August 27–28, 1992, meeting of the Council is to discuss the EPA Office of Environmental Education's (OEE) progress in implementing its environmental education program. The Council is

expected to issue its first set of recommendations to EPA following the meeting. Subcommittees of the Council have been formed to address broad issues such as OEE's strategic goals for environmental education, grants, and communication with the public. Other items expected to be discussed include the status of the Council's development of a national environmental education report to Congress and OEE's progress in designing an environmental education awards program.

Members of the public are invited to attend the meeting and to submit written comments to EPA following the meeting. For additional information on the Advisory Council, the upcoming meeting, or to submit written comments following the meeting, please contact Ms. Kathleen MacKinnon, U.S. Environmental Protection Agency, Office of Environmental Education (A–107), 401 M Street SW., Washington, DC 20460, 202–260–4951.

Dated: July 23, 1992.

Kathleen MacKinnon,

Designated Federal Official, National Environmental Education, Advisory Council.

[FR Doc. 92–17901 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 22, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy Contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0425

Title: Section 74.913, Selection procedure for mutually exclusive ITFS applications

Action: Extension of a currently approved collection

Respondents: Non-profit institutions

Frequency of Response: On occasion reporting

Estimated Annual Burden: 150 responses; 1 hour average burden per response; 150 hours total annual burden.

Needs and Uses: Section 74.913(d) requires applicants tied in a comparative selection proceeding to submit a statement of the number of students at its proposed receive locations who are formally enrolled in classes for credit toward an academic degree or diploma, or a legally required certification or license. This claim of students who would benefit from the proposed system must correlate to and be supported by the educational programs proposed in its application. Applicants will not be required to submit their student enrollments and the extent of their proposed ITFS systems unless and until it is determined that they are tied in a comparative selection proceeding. The data will be used by FCC staff to determine the most qualified applicant to provide ITFS service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17812 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of New Orleans Coastal Cargo Company; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200392–002.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties:

Port of New Orleans, Coastal Cargo Company, Inc.

Synopsis: The subject modification provides for the extension of the Agreement on a month-to-month basis until a new lease can be negotiated.

Dated: July 23, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17821 Filed 7–28–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 92–44]

Revenue Protection Services Inc, as Agency for Bottacchi Line v. International Resource Services, Inc. and Sunshine Loading Service, Inc.; Filing of Complaint and Assignment

Notice is given that a compliant filed by Revenue Protection Services, Inc. as agent for Bottacchi Line ("Complainant") against International Resource Services, Inc. and Sunshine Loading Service, Inc. ("Respondents") was served July 21, 1992. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts for a shipment from Miami, Florida to Buenos Aires, Argentina in March 1990.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 21, 1993, and the final decision of the Commission shall be issued by November 18, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17824 Filed 7–28–92; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Best Freight Forwarding Inc., 3323 N.W. 116th Street, Miami, FL 33167.
Officers: Roberto Leal, President; Raquel Leal, Secretary/Treasurer; Daniel Verano, Vice President.
Alejandro Villar, 10541 SW 107th Street, Miami, FL 33176; Sole Proprietor.
International Freight Agency, 155–06 South Avenue, Jamaica, New York 11434; Peter John Lingard, Sole Proprietor.
Uni-Pac Shipping, Inc., 13900 East Valley Blvd., LaPuente, CA 91744.
Officers: Jimmy Jiang, President; Beverly Jiang, Vice President.
WPJA International Freight Systems Inc., 550 NW 79th Ave., Miami, FL 33166.
Officers: Winston Pigott, President/Director, Kim Marie Pigott, Vice President/Director.
Honeybee International Forwarding, 5680 Ayala Ave., Irwindale, CA 91706.
Officer: Samih Salim Abushousheh, President/Director.
Transcontinental Marketing Corporation, dba TRAMACO, 321 Columbus Ave., Boston, MA 02116–5114.
Officers: John P. Combellack, President, Paul W. Wilson, Vice President, Lawrence L. Curtis, Controller.

Dated: July 23, 1992.
By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17822 Filed 7–28–92; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1781) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 670.
Name: H.P. Lambert Co.
Address:: 256 Friend Street, Boston, MA 02114.
Date Revoked: May 20, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 3034–R.
Name: Uniport, Inc.
Address: 125 Moen Ave, Cranford, NJ 07016.
Date Revoked: June 9, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 1794.
Name: Three Way Corporation dba Three Way Ocean Freight, A Division of Three Way Corporation.
Address: 1120 Karlstad Dr., Sunnyvale, CA.
Date Revoked: June 14, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 1326.
Name: Home-Pack Transport, Inc.
Address: P.O. Box 739, Garfield, New Jersey 07026
Date Revoked: June 20, 1992.
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–17823 Filed 7–28–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0770]

10 Percent Revenue Limit on Bank-Eligible Securities Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: In 1987 and 1989 the Board authorized bank holding companies to engage, through separate subsidiaries ("section 20 subsidiaries"), in underwriting and dealing in securities that a bank may not underwrite and deal in directly ("ineligible securities"). In order to ensure compliance with section 20 of the Glass-Steagall Act, the Board provided that the amount of revenue a section 20 subsidiary may derive from ineligible securities activities may not exceed 10 percent of the total revenue of the subsidiary. Section 20 prohibits a member bank from being affiliated with a company that is "engaged principally" in underwriting and dealing in securities. The Board believes that recent changes in the level and structure of interest rates involving unusually low levels of short-term rates and an historically steep yield curve have the potential for distorting the revenue test as an accurate measure of whether a section 20 subsidiary is engaged principally in ineligible securities activities. The Board, therefore, proposes to provide an alternative to the current revenue test to take into account such changes, and requests comment on possible alternative tests.

DATES: Comments must be received by August 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0770, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452-3750), Scott G. Alvarez, Associate General Counsel (202/452-3583), Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452-2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorthea Thompson (202/452-4544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Section 20 of the Glass-Steagall Act

Section 20 of the Glass-Steagall Act prohibits a member bank from becoming an affiliate of any company that is "engaged principally in the issue, flotation, underwriting, public sale, or distribution" of securities. 12 U.S.C. 377. The Board and the courts have recognized that section 20 permits a member bank to be affiliated with a company whose largest activity is underwriting and dealing in the kind of securities that banks may underwrite and deal in directly ("eligible securities", so long as the company does

not conduct sufficient underwriting and dealing activities with regard to ineligible securities to be deemed to be "engaged principally" in those ineligible securities activities.[1]

Calculation of "Engaged Principally"

After careful review of the terms, legislative history, and purpose of section 20 and related provisions of the Glass-Steagall Act, the Board in 1987 concluded that a company would not be "engaged principally" in ineligible securities activities for purposes of the Glass-Steagall Act if those activities were not "substantial" relative to the other activities of the company.[2] The Board also concluded that an activity was not substantial if the gross revenue derived from the activity did not exceed the range of between 5 and 10 percent of the total gross revenues of the company.

The Board determined to base its consideration of the substantiality of an activity on a measure of the gross revenue of the company because the Board believed that a test based on gross revenue was "an objective and meaningful measure of the importance of the activity to the enterprise as a whole."[3] The Board also found that a test based on gross revenue "reflects the level of risk involved in the activity," which was an important consideration behind enactment of the Glass-Steagall Act. Finally, the Board indicated that a gross revenue test would pose the fewest operational difficulties and would "avoid the potential for manipulation present in a test based solely on sales volume," which was the test advocated most strongly by the applicants.[4]

The Board determined to adopt the more conservative 5 percent threshold when the first section 20 applications were initially approved in April 1987, but committed to review that level within a year. In September 1989, following that review, the Board permitted securities affiliates to engage in ineligible securities activities up to 10 percent of gross revenues.[5]

In authorizing and regulating the section 20 subsidiaries, the Board has sought to achieve two objectives: to approve only those activities that most clearly comply with applicable statutory limits, and to assure that, as shown by the section 20 subsidiaries' actual experience with newly-authorized functions, expanded securities functions do not impair bank safety and soundness or result in conflicts of interest.

Effect of Recent Changes in Interest Rate Structure

In monitoring the operations of the existing section 20 subsidiaries, the Board has noted that historically unusual changes in interest rate configurations recently have affected the revenue test as a measure of the relative importance of eligible and ineligible securities activities in ways that were not anticipated by the Board when that test was established. Short-term interest rates have declined to their lowest levels since the early 1960's and, although long-term rates have also declined, these rates have declined much less than short-term rates, leaving an unusually sharply upward sloping yield curve. These unforeseen developments in turn have biased the relative revenue derived by some section 20 companies from their securities operations.

The sharp decline in short-term rates has an especially marked effect on revenues obtained by section 20 subsidiaries from their eligible securities operations. First, eligible securities activity at many subsidiaries tends to involve a high proportion of short-term instruments and, second, eligible activity on average derives a greater percentage of revenue from interest earnings than does ineligible activity. Recent revenue data from a number of section 20 subsidiaries do show significant declines in revenue derived from eligible securities activities. Since there has been very little corresponding decline in long-term rates, revenue earned by these subsidiaries from holding ineligible securities, many of which tend to be of medium- to long-term maturity, has not declined to the same extent. Thus, the revenue currently derived by some section 20 subsidiaries from eligible and ineligible activities suggests that the relative importance of eligible activities in the subsidiary's business has declined, in some cases substantially.

However, according to recent data on the section 20 subsidiaries, other indicators of the relative importance of eligible activities, in particular, the proportion of eligible and ineligible assets held by these subsidiaries, have not decreased, suggesting that the relative level of eligible activity has not declined as much as the revenue data suggest. The decline in the ratio of eligible to total revenue at these subsidiaries apparently can be attributed more to the extraordinary level and shape of the yield curve rather than to changes in the subsidiary's mix of eligible and ineligible activities. The results produced by the revenue test may not be indicative of any shift in underlying activity, and the revenue test, due to its dependence on interest rates, may not be as reliable a measure of "engaged principally" as the Board had anticipated in September 1989 and in earlier orders.

While the degree of the decline in eligible revenues will necessarily vary from section 20 subsidiary to section 20 subsidiary, depending on the kinds and maturity of assets each subsidiary holds and the nature of the business it conducts, a comparison of rates prevailing when the 10 percent limit was established and rates prevailing at present suggests that the effect of the sharp drop in short-term rates in the past few months will very likely have a large impact on at least some of the section 20 subsidiaries. For example, using the most simplistic assumptions—that the duration of the ineligible securities held by a section 20 subsidiary can be represented by a corporate bond, that the duration of its eligible securities can be represented by a 3-month Treasury bill rate, and that all of the subsidiary's revenue is derived from interest on securities held—at interest rates prevalent in September 1989, when the Board increased the revenue limit to 10 percent, the amount of ineligible securities that the subsidiary could hold under the 10 percent revenue limit was approximately 7-1/4 percent of total assets, given the difference at that time between Treasury bill and corporate bond rates. With the interest rate structure prevalent today, the same subsidiary could hold only about 3-3/4 percent of its total assets in ineligible securities, because of the current very wide disparity between short- and long-term rates.

This effective change in the revenue test was not intended by the Board when it established the 10 percent limit. In the Board's view, the reduction in a section 20 subsidiary's eligible revenues due solely to the highly unusual and unforeseen alteration in the historic relationship between short- and long-term interest rates should not artificially force the subsidiary to restrict its ineligible activities to levels below what would be permitted by the 10 percent test under the interest rate patterns that prevailed when the Board established that limit. Accordingly, the Board has decided to allow section 20 subsidiaries, at their election, to use an alternative

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[1] *Citicorp*, 73 Federal Reserve Bulletin 473, 484 (1987) ("*Citicorp*"); *Securities Industry of America v. Board of Governors*, 839 F.2d 47, 67-8 (2d Cir. 1988).

[2] *Citicorp* at 484.

[3] *Citicorp* at 484.

[4] *Id.*

[5] 75 Federal Reserve Bulletin 751.

test for determining compliance with the statutory "engaged principally" restriction, instead of the current revenue test.

The Board notes, however, that the existing revenue test can be adjusted by a variety of methods to account for unusual changes in the yield curve. The Board requests public comment on appropriate methods that may be employed to achieve this objective. The Board is specifically requesting comment on two different methods of creating an alternative test:

1. Revenue Test Indexed to Interest Rate Changes

Under this proposed technique, the 10 percent revenue test would be modified to account for changes in the level and slope of the yield curve since September 1989. Section 20 subsidiaries would be allowed to adjust their current interest and dividend revenue on a quarterly basis to compensate for the unintended consequences of the shift in risk-free rates since 1989. In effect, this adjustment would be an attempt to calculate the revenue that would have been earned from eligible and ineligible activities in the current period if the Treasury yield curve were as it was in September 1989.

Several steps would be required under this method of adjusting revenue. These steps could be incorporated in the memoranda section of the FR Y-20, Schedule SUD-I, which section 20 subsidiaries use to report current financial information.

a. The subsidiary would need to calculate the average duration of its eligible and ineligible assets for the quarter in question. Ideally, such a calculation would be made at the close of business each day, since interest and dividends are earned on securities held as of that time. The Board requests comment on whether less frequent calculations, such as weekly or monthly, might be adequate.

b. Having made this calculation, the subsidiary would consult a table, published by the Board, that provides an adjustment factor corresponding to various portfolio durations. Each adjustment factor represents the ratio of interest rates in September 1989 on Treasury securities to average interest rates on Treasury securities in the most recent quarter for obligations having that particular duration.

c. Current interest and dividend revenue for the eligible and ineligible categories would then be scaled by the appropriate adjustment factors.

d. Adjusted interest and dividend revenue would be added to the other types of revenue earned by the subsidiary to calculate an adjusted ratio of ineligible to total revenue for the subsidiary.

The Board recognizes that computation of daily duration estimates might prove burdensome for some section 20 subsidiaries. Section 20 subsidiaries would not be required to use the indexed revenue limit and could continue to use the current revenue test. However, once a subsidiary chooses the alternate indexed method of applying the 10 percent limit, the subsidiary would be expected to continue to use that method for some fixed period of time, such as five years.

The adjustment technique outlined may not be the best one available. For one thing, because it is applied to all interest and dividend revenue, in effect this technique adjusts risk premiums embodied in interest rates as well as the base risk-free rate. More complex methods taking account of additional factors seem to entail even more burdensome data and reporting requirements. The Board solicits comments on other methods that might be used to accomplish the same adjustment, as well as comments on the feasibility and burden of the technique suggested.

2. Alternate Asset-Based Test

A section 20 subsidiary, at its election, would be allowed to compute compliance with the "engaged principally" language of section 20 on the basis of assets, rather than on the basis of the existing revenue test. Specifically, such a subsidiary would be viewed as in compliance with section 20 for any quarter if the average daily assets held in connection with underwriting and dealing in ineligible securities for that quarter, when added to the average daily assets held in connection with ineligible securities activities for the previous seven quarters, does not exceed 10 percent of the average daily total assets of the subsidiary for that quarter and the previous seven quarters.

A test based on the value of securities assets held by a section 20 subsidiary is less sensitive to alterations in interest rate relationships than a test based solely on revenue. Thus, an asset-based test might represent a more accurate measure of the relative importance of eligible and ineligible securities activities.

When the Board initially selected revenue as the best indicator of whether specific securities activities are a substantial activity of a section 20 subsidiary, the Board noted two basic problems with a test based on average assets. The Board expressed concern that, compared to a revenue test, an asset-based test can be more easily manipulated by inflating the asset base solely to support ineligible activity. Also, the Board found that an average asset test, even if computed on a daily basis, would not take into account underwriting activities, since underwriters typically hold the securities being sold only for a few hours.[6] The Board seeks comment on whether it is appropriate to implement modifications to an asset-based test designed to minimize these defects.

For example, in order to prevent section 20 subsidiaries from engaging in "matched book" or similar transactions in eligible securities for the sole purpose of offsetting ineligible securities activities, specific limits could be imposed on the use of such transactions to artificially increase eligible assets totals in an asset-based test. One other possible restriction is a separate cap on the total amount of revenues that may be derived from ineligible securities activities during any calendar quarter. This cap would serve as a check to assure that manipulation of the eligible asset base does not allow a subsidiary to substantially expand its ineligible securities business. Such a revenue limit would be set at a level somewhat higher than 10 percent, such as 15 percent. If an asset-based test is adopted, the Board would expect to scrutinize, through the examination process, transactions that do not appear to have been entered into for any ostensible business purpose but rather for manipulating the eligible asset base. Comment is also solicited as to any other objective standards that may be adopted to ensure the integrity of an asset-based test.

If an asset-based test is adopted, a section 20 subsidiary could be given the option of compliance with that test in lieu of the current revenue limit. In order to prevent a subsidiary from repeatedly shifting between revenue and asset tests in an effort to maximize its eligible securities base, a section 20 subsidiary that chooses the asset-based test may be precluded from changing back to the revenue test for some fixed period of time, such as five years.

In addition to proposing basic changes in the 10 percent revenue test, the Board is also concerned that the recent sharp and unanticipated alterations in the yield curve might have severe immediate effects on the operations of at least some section 20 companies. The Board is also concerned that these effects will occur before an alternative to the current revenue limit can be

[6] *Citicorp*, at 484.

implemented and that section 20 subsidiaries may need time to adjust to these unforeseen changes.

For this reason, the Board amends its earlier section 20 orders to permit a section 20 subsidiary to elect to comply with the 10 percent test on a quarter-by-quarter basis, instead of the 8-quarter rolling average prescribed in those orders, until an alternative test for complying with the 10 percent limit is implemented by the Board, or until the end of the fourth quarter of 1992, whichever is earlier.[7] The alternative quarter-by-quarter computation period as a measure of the substantiality of a section 20 company's compliance with the "engaged principally" limit is fully consistent with the terms and purpose of the Act. The availability of a quarter-by-quarter basis for computation may alleviate the need for drastic adjustments in the level of ineligible activity caused by recent pronounced declines in short-term rates and eligible revenue that might otherwise be necessary under the 8-quarter average method where no adjustment is made for interest rate distortion. A section 20 subsidiary is not required to use the quarter-by-quarter method and may continue to compute compliance with the revenue test using an 8-quarter rolling average.

To prevent manipulation, a section 20 subsidiary that elects to comply with the 10 percent limit on a quarter-by-quarter basis must continue to comply on that basis until the Board adopts an alternative to the current revenue test, or until the end of the fourth quarter of 1992, whichever is earlier. A section 20 subsidiary that chooses to use the quarter-by-quarter computation period for the current quarter, must advise the appropriate Reserve Bank within 10 days from the date of this order.

By order of the Board of Governors of the Federal Reserve System, July 22, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-17839 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Bailey Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Bailey Financial Corporation, Clinton, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of M.S. Bailey & Son, Bankers, Clinton, South Carolina.

2. Harbor Bankshares Corporation, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Harbor Bank of Maryland, Baltimore, Maryland.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 90 percent of the voting shares of G.W. Jones Exchange Bank, Marcellus, Michigan.

2. Pyramid Bancorp, Inc., Grafton, Wisconsin; to become a bank holding company by acquiring up to 100 percent of the voting shares of Grafton State Bank, Grafton, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Harlingen Bancshares, Inc., Harlingen, Texas; a *de novo* company to become a bank holding company by acquiring 100 percent of the voting shares of HN Bancshares of Delaware, Inc., Wilmington, Delaware; and Harlingen National Bancshares, Inc., Harlingen, Texas, and existing bank holding company, and thereby indirectly acquire Harlingen National Bank, Harlingen, Texas. In connection with this application, HN Bancshares of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Harlingen National Bank, Harlingen, Texas.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17860 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Central Arkansas Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

[7] After that time, all section 20 subsidiaries must comply with any applicable test on a rolling average 8-quarter basis.

indicated or the offices of the Board of Governors not later than August 21, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Arkansas Bancshares, Inc., Arkadelphia, Arkansas; to engage *de novo* through its subsidiary, Central Arkansas Securities, Inc., Hot Springs, Arkansas, in providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17861 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Jimmy G. and Wilda R. Hankins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jimmy G. and Wilda R. Hankins, Marietta, Oklahoma; to acquire an additional 9.33 percent of the voting shares of Bank of Love County, Marietta, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. John Weatherford McEvoy & Nancy Anita McEvoy, Casa Grande, Arizona; to acquire between 9.68 percent and 15.05 percent of the voting shares of Sunstate Bancshares, Inc., Casa Grande, Arizona, and thereby indirectly acquire The Bank of Casa Grande Valley, Casa Grande, Arizona.

2. Kjell H. Ovale, San Francisco, California; to acquire 40.2 percent of the voting shares of Marin National Bancorp, San Rafael, California, and thereby indirectly acquire First National Bank of Marin, San Rafael, California.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17858 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

SouthTrust Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire CK Federal Savings Bank, Concord, North Carolina, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of North Carolina.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17859 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

President's Youth Fitness Program; Correction

AGENCY: President's Council on Physician Fitness and Sports (PCPFS), HHS.

ACTION: Correction.

SUMMARY: A Notice in the Federal Register of July 20, 1992, (57 FR 32022) invited public comment on the appropriateness of a proposal that the physical-fitness testing programs of the President's Council on Physical Fitness and Sports and of the American Alliance for Health, Physical Education, and Recreation and Dance be unified into one program, to be entitled "The President's Youth Fitness Program." The Notice inadvertently omitted an indication of the length of the comment period and of its closing date. The intent is that there be a 60-day comment period, with a closing date of September 18, 1992.

ADDRESSES: Christine G. Spain, Director; Research, Planning and Special Projects, President's Council on Physical Fitness and Sports; 701 Pennsylvania Avenue NW., suite 250; Washington, DC 20004.

Dated: July 22, 1992.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 92-17877 Filed 7-28-92; 8:45 am]

BILLING CODE 4160-17-M

Public Health Service

Centers for Disease Control Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 57 FR 29732–29733, July 6, 1992) is amended to revise functional statements for the National Center for Environmental Health.

On June 25, 1992, the Secretary, Health and Human Services, approved the (1) establishment of the National Center for Injury Prevention and Control and (2) title change for the National Center for Environmental Health and Injury Control to the National Center for Environmental Health.

Section HC–B, Organization and Functions, is hereby revised as follows:

National Center for Environmental Health (HCN), Office of the Director (HCN1). References to the National Center for Environmental Health and Injury Control and CEHIC should be changed to the National Center for Environmental Health and NCEH, as appropriate.

All references to NCEHIC should be changed to NCEH in the following functional statements: Office of Planning, Evaluation, and Legislation (HCN13), Office of Program Operations and Management (HCN14), and the Information Resources Management Group (HCN17).

Effective Date: July 20, 1992.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 92–17905 Filed 7–28–92; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Privacy Act of 1974; Computer Matching Programs

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of Computer Matching to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing a notice of a computer matching program that SSA conducts that is subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100–503.

DATES: We filed a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 26, 1992. The matching program is effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Projection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;
(2) Provide notification to applicants and beneficiaries that their records are subject to matching;
(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;
(4) Furnish detailed reports to Congress and the Office of Management and Budget; and
(6) Establish a Data Integrity Board (DIB) that must approve match agreements.

B. SSA Computer Matches Subject to Pub. L. 100–503

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of Pub. L. 100–503. Below is a brief description followed by a detailed notice of a match that SSA will be conducting as of July 1, 1992 or later.

SSA Matching with Railroad Retirement Board (RRB)—Master Beneficiary Record (MBR)/RRB

Purpose: To assist in adjudicating claims for benefits under title II of the Social Security Act and programs administered by RRB. Data is exchanged so that the correct benefit amount can be paid.

Dated: June 26, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Master Beneficiary Record (MBR) Matching With Railroad Retirement Board (RRB) Records

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

Section 18 of the Railroad Retirement Act (RRA) requires that earnings treated as compensation under the RRA be considered as wages under the Social Security Act (the Act) for purposes of determining entitlement under the Act if the number holder has less than 120 months of railroad service. The purpose of this matching program is for SSA to obtain RRB earnings records for matching the SSA's earnings records on Retirement, Survivors, and Disability insurance (RSDI) beneficiaries. SSA will use the data to establish entitlement to, and amount of, Social Security benefits.

In addition, under section 7 of the RRA, SSA provides earnings other data to RRB to determine the correct payment of RRB benefits.

C. Authority for Conducting the Matching Program

Sections 202 and 205 of the Act (42 U.S.C. 402 and 405) and 45 U.S.C. 231.

D. Categories of Records and Individuals Covered by the Match

The RRB records consist of identifying information and railroad earnings from its Service and Compensation Record file. SSA's records consist of RSDI data maintained in the Master Beneficiary Record (MBR) system (last published in the Federal Register on April 9, 1992 (57 FR 12322, 12326)). The MBR maintains records about individuals who are claimants for, or beneficiaries of, RSDI benefits.

E. Inclusive Dates of the Match

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget,

whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments of the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 92–17869 Filed 7–28–92; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–92–3433; FR–3145–N–02]

NOFA for Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of extension of time for submission of applications.

SUMMARY: On May 29, 1992, HUD published a Notice of Funding Availability (NOFA) that announced HUD's funding of $6.9 million for the Fair Housing Initiatives Program (FHIP). The purpose of this Notice is to extend the time for submission of applications until August 28, 1992.

DATES: The application due date originally announced for July 28, 1992 is extended by this Notice to August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–3214. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) on 202–708–3214 for information on the program. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's FY 1992 funding of $6.9 million for the Fair Housing Initiatives Program (FHIP) was published on May 29, 1992 (57 FR 22872). This program provides assistance to State and local agencies, public and private nonprofit organizations, and other public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The NOFA provided that an application for funding would be made available following publication of the NOFA, and that the application due date and time would be specified in the application list. In no event, however, would the application be due before July 28, 1992.

The application due date that was specified in the application kit is July 28, 1992. However, because some applicants experienced delay in receiving their application kits, and because funds were made available for the first time for the Administrative Enforcement Initiative under FHIP, the Department has determined that it would be appropriate to provide additional time for the preparation and submission of applications.

Applications will now be due on or before 4 p.m. on Friday, August 28, 1992. Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The application kits are revised to reflect this extended due date. Applicants that have already submitted applications will be given full consideration and do not have to submit another application, but they may, at their option, withdraw their first application and submit a new, revised application on or before the extended due date.

In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the extended deadline. Applicants should take this practice into account and make early submission of their materials to avoud any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the extended deadline will not be considered.

Dated: July 27, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–18073 Filed 7–28–92; 8:45 am]
BILLING CODE 4210–28–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3354; FR–3167–N–02]

Extension of Application Submission Deadline Notice of Fund Availability (NOFA) for FY 1992; Public Housing Development/Major Reconstruction of Obsolete Public Housing/Family Self-Sufficiency

AGENCY: Office of the Assistant Secretary for Public and Indian housing, HUD.

ACTION: Notice of extension of Homeownership Replacement Housing application submission deadlines.

SUMMARY: HUD is extending from August 3, 1992 to September 1, 1992 the period for submitting applications for public housing development funds which request to use such assistance to meet replacement housing requirements under the HOPE 1 (Homeownership and Opportunity for People Everywhere) Program or the section 5(h) Homeownership Program. All other types of assistance to be allocated under the FY 1992 Notice of Fund Availability published in the **Federal Register** on June 18, 1992 (*see* 57 FR 27330) remain subject to the original August 3, 1992 deadline.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Public Housing Development program, contact Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These are not toll-free numbers.)

For questions concerning the replacement housing requirements under the HOPE 1 and section 5(h) programs, contact Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 18, 1992, HUD published a Notice of Fund Availability (NOFA) announcing the availability in FY 1992 of funds for

public housing development and for Major Reconstruction of Obsolete Projects (MROP) (*see* 57 FR 27330).

The NOFA indicated that development applications would be limited to replacements for demolition/disposition including any HOPE 3 transfers subject to section 18 of the United States Housing Act of 1937 (USHA), replacements for homeownership transfer under HOPE 1, replacements for homeownership under section 5(h) of the USHA, litigation settlement, MROP and Family Self-Sufficiency Incentive Award housing.

The submission deadline for public housing development and MROP applications was August 3, 1992. In this Notice, the Department is extending from August 3, 1992 to September 1, 1992 the submission deadline with respect to a limited class of potential public housing development applications. This class consists of those applications which request public housing development funds to provide replacement housing under either the HOPE 1 program, or the section 5(h) Homeownership Program.

All other applications for public housing development funds—including applications requesting replacements for demolition/disposition subject to section 18 of the USHA (including any HOPE 3 transfers), litigation settlement, and Family Self-Sufficiency Incentive Award housing, remain subject to the August 3, 1992 deadline. Applications for MROP also remain subject to the August 3, 1992 deadline.

The Department believes that this extension of the submission deadline is necessary to coordinate effectively the replacement housing requirements under the HOPE 1 and section 5(h) Homeownership Programs with the public housing development program, which provides assistance for one type of replacement housing under those programs.

(With respect to the HOPE 1 program, the need for this extension is particularly highlighted by HUD's recent decision to extend the deadline for the submission of HOPE 1 implementation grant applications (*see* 57 FR 24504), and to extend the period for curing deficiencies (*see* 57 FR 30225). The Department believes that unless it likewise extends the period for submission of a public housing new development application requesting replacement housing assistance to be used under the HOPE 1 program, it will be exceedingly difficult to coordinate the supply and demand of replacement housing under these two programs.)

Dated: July 23, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-17874 Filed 7-28-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-08-4120-11; NDM 81258]

Coal Leases, Exploration Licenses, etc.: Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation.

Coal Exploration License Application NDM 81258

Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

T. 145 N., R. 86 W., 5th P.M.,
Sec. 8: E½NE¼;
Sec. 20: SW¼.
T. 145 N., R. 88 W., 5th P.M.,
Sec. 2: Lot 1, SE¼NE¼.

318.33 acres—Mercer County, North Dakota.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107-6800; and The Coteau Properties Company, P.O. Box 1089, Beulah, North Dakota 58523. Such written notice must refer to serial number NDM 81258 and be received no later than 30 calendar days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication of this notice in the Beulah Beacon, whichever is later. This notice will be published once a week for 2 consecutive weeks in the Beulah Beacon.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by The Coteau Properties Company is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana 59107 during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: July 20, 1992.

Francis R. Cherry, Jr.,

Associate State Director.

[FR Doc. 92-17854 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-921-08-4120-11; MTM 81096]

Coal Leases, Exploration Licenses, etc.; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation.

Coal Exploration License Application MTM 81096

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.,
Sec. 14: SW¼NE¼, NE¼NW¼;
Sec. 15: NW¼SW¼SE¼, S½SW¼SE¼;
Sec. 22: SE¼NE¼;
Sec. 23: NE¼NE¼, S½NW¼;
Sec. 25: SW¼SW¼,
Sec. 26: N½SW¼, NW¼SE¼;
Sec. 27: S½NE¼.
T. 8 S., R. 40 E., P.M.M.,
Sec. 30: NE¼SW¼, NW¼SE¼.

590.00 acres—Big Horn County.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107-6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 81096 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Big Horn County News, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Big Horn County News.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Spring Creek Coal Company is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd street, Billings, Montana during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: July 17, 1992.

John A. Kwistkowski,

Acting State Director.

[FR Doc. 92-17855 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-DN-M

[CO-050-4333-10]

Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure to motorized vehicle use on 1,800 acres of BLM lands for the protection of public safety and natural resource values.

SUMMARY: The following public lands have been closed to motorized vehicle travel: The area south of Monte Vista Colorado and west of the Monte Vista National Wildlife Refuge in T. 37N., R. 7 E., those portions east of BLM road 5100 in sections 2, 3, 10, 11.

The intent of this action is to reduce a dangerous situation in where hunters pursuing elk that leave the Monte Vista National Wildlife Refuge create a safety hazard due to firearm cross-fire. A State highway located between the refuge and the affected BLM managed lands results in additional safety concerns.

This action does not restrict hunting use in the area but will only require hunters to access the area on foot rather than using their vehicles. The closure is also intended to protect the fragile vegetation and highly erodible soils from undue degradation caused by cross-country vehicle travel.

This closure is being implemented under the authority of the Code of Federal Regulations 43 CFR 8341.2(a). Penalty for violation includes a fine of not more than $1,000.00, or imprisonment for not longer than 12 months, or both.

DATES: Closure to become effective immediately and continue until May 31, 1993.

ADDRESSES: Comments can be directed to: Bureau of Land Management, Area Manager, 1921 State Street, Alamosa, CO 81101 or District Manager, P.O. Box 2200, Canon City, CO 81215-2200.

FOR FURTHER INFORMATION CONTACT: Joe Kraayenbrink, Area Manager, San Luis Resource Area, (719) 589-4975.

SUPPLEMENTARY INFORMATION: Any comments will be evaluated by the State Director, who may sustain, vacate or modify this closure.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 92-17856 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-JB-M

[ES-962-4730-12; ES-045440, Group 142, Wisconsin]

Filing of Plat of Dependent Resurvey

The plat of the dependent resurvey of a portion of the subdivisional lines of Township 38 North, Range 8 West, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 10, 1992.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 10, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: July 20, 1992.

Denise P. Meridith,

State Director.

[FR Doc. 92-17825 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-GJ-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through September 1992. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Reclamation announcements of individual repayment and water service contract actions will be published in the Federal Register and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. These public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C Street, NW., Washington, DC 20240; telephone 202-208-3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) section 43 CFR 426.20 of the rules and regulations published in 48 FR 54785, December 6, 1983, Reclamation will publish notice of proposed or amendatory repayment contract actions for any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1992. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made

available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate Reclamation officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(Pub. L.) Public Law
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724–0043, telephone 208–334–1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Individual Irrigators, M&I, and Miscellaneous Water Users; Columbia Basin, Minidoka, Umatilla, and Crooked River Projects; Idaho, Montana, Oregon, and Washington: Temporary (interim) repayment and water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.

4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.

5. New Dry Creek Ditch Company, Ltd., Boise Project, Idaho; North Unit ID, Deschutes Project, Oregon; American Falls Reservoir District Number 2, Burgess Canal Company, Clark and Edwards Canal and Irrigation Company, Craig-Mattson Canal Company, Danskin Ditch Company, Enterprise Canal Company, Ltd., Farmers Friend Irrigation Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Long Island Irrigation Company, Parks and Lewisville Irrigation Company, Ltd., Parson Ditch Company, Peoples Canal and Irrigation Company, Poplar ID, Rigby Canal and Irrigating Company, Rudy Irrigation Canal Company, Ltd., Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. Baker Valley Irrigation District, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

9. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals, with the Ochoco Irrigation District, and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

10. Palisades Water Users Inc., Minidoka-Palisades Project, Idaho: Repayment contract for additional 500 acre-feet of storage space in Palisades Reservoir.

11. Willow Creek Water Users, Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

12. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to third parties.

13. Bridgeport Irrigation District, Bridgeport, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

14. Hermiston Irrigation District, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Cold Springs Dam.

15. Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman Dam and Ochoco Dams.

16. The Dalles Irrigation District, The Dalles Project, Oregon: SRPA loan repayment contract; $2,000,000 proposed loan obligation.

17. Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.

18. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

19. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.50 per acre-foot for a term of up to 40 years.

20. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1990 and 1991 construction installments of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977.

21. Douglas County, Oregon: SRPA loan repayment contract; proposed loan obligation of $20,715,760 and grant of $9,228,380.

22. Mitigation, Inc., Palisades/Ririe Projects, Idaho: Contract for storage space in Palisades and Ririe Reservoirs

(18,900 and 80,500 acre-feet, respectively) pursuant to section 5(a) of the Fort Hall Indian Water Rights Act of 1990.

23. Trinity Springs Ltd., Boise Project, Idaho: Industrial water service contract for the purchase of 800 acre-feet of storage space annually in Anderson Ranch Reservoir for a 40-year period; water to be used in commercial production of bottled mineral water.

24. United States Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the purchase of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir for a 40-year period; water to be used on crops for wildlife mitigation purposes.

25. City of Madras, Deschutes Project, Oregon: Renewal of municipal water service contract for approximately 125 acre-feet per acre annually from the project water supply for a 40-year period; water to be used for lawn watering.

26. Willammette Basin water users, Willamette Basin Project, Oregon: Add language to form of water service contract to provide for periodic reviews, with adjustments made if necessary, to mitigate for adverse impacts to natural resources.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

2. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note:* Copies of the standard form of temporary water service contract for the various types of services are available, upon written request, from the Regional Director at the address shown above.

3. Friant Division Contractors, CVP, California; Renewal of existing long-term water service contracts with contractors on the Friant-Kern and Madera Canals or diverters from Millerton Reservoir; most contracts expire 1992–1997, two contracts expire later; water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

4. Shasta Dam Area Public Utilities District, CVP, California: Renewal/Increase of M&I water supply contract; less than 6,000 acre-feet.

5. U.S. Fish and Wildlife Service, CVP, California; Long-term contract for approximately 150,000 acre-feet of CVP water for Federal refuges in the CVP service area.

6. Contra Costa Water District, CVP, California; Amendatory water service contract to add the operation of the Los Vaqueros Project, including an additional point of delivery; the amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy.

7. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

8. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

9. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

10. Redwood Valley Water District, SRPA, California: Amendatory loan repayment contract to restructure annual repayment schedule.

11. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply to provide Company's water users an alternate water supply during periods of deficiency in their appropriative water rights; annual water quantity not determined at this time.

12. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply to provide Company's water users an alternate water supply during periods of deficiency in their appropriative water rights; annual water quantity not determined at this time.

13. Madera ID. Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1993.

14. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1993.

15. Truckee Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water.

16. Truckee Carson Irrigation District, Newlands Project, Nevada: Contract for repayment of construction costs of Newlands Project.

17. San Luis Water District, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

18. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply to provide District's water users an alternate water supply during periods of deficiency in their appropriate water rights; annual water quantity not determined at this time.

19. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003; water quantities in existing contracts range from 70 to 50,000 acre-feet.

20. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

21. United States Department of Veteran Affairs, CVP, California: Contract for M&I water purposes in support of the new San Joaquin Valley National Cemetery near Santa Nella, California.

22. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet; Stony Creek Watershed above Black Butte Dam.

23. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet; above Black Butte Dam.

24. San Luis Water District, CVP, California: Amendment to Contract No. 14–06–200–7773A to transfer lands and allocated share of CVP water supply to San Luis Water District from Romero Water District.

25. Romero Water District, CVP, California: Amendment to Contract No. 14–06–200–7758 to transfer lands and allocated share of CVP water supply to San Luis Water District.

26. ID's and similar water user entities, CVP, California: Amendatory water service contracts; to change the definition of "year" to conform to the standard CVP water year of March 1 through the end of February.

27. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP

water rates and update standard contract articles.

28. City of Tracy, CVP, California: Amend water service Contract No. 14–06–200–7858A to reallocate up to 13,300 acre-feet from Mercy Springs WD, Contract No. 14–06–200–3365A, to City of Tracy and terminate the Mercy Springs WD contract.

29. Sierra Pacific Power Company and Pyramid Lake Tribe, Washoe and Truckee-Storage Projects, Nevada and California: Interim contract to convey and/or store non-project water.

30. Naval Air Station and Truckee Carson ID, Newlands Project; Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

31. Del Puerto WD, CVP, California: Amend water service Contract No. 14–06–200–922 to include M&I use.

32. El Dorado County Water Agency, San Juan Suburban WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan Suburban WD, and 22,000 acre-feet for Sacramento County Water Agency.

33. Non-Federal entity, CVP, California: Cost-sharing agreement with a yet to be determined non-Federal entity for the Folsom Dam and Reservoir reoperation.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

3. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Stephen Sturges, Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 20,424 acre-feet per year total.

4. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,292 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

5. Gila River Indian Community,CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. Armon Curtis, Arlin Dulin, Jacy Rayaner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

8. Imperial ID, Lower Colorado Water Supply Project, California: Contract providing for O&M of the project well field.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

10. County of San Bernardino, SRPA, California: Repayment contract for a $29.6 million loan.

11. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

12. Bullhead City, Consolidated Water Co., Lake Havasu City, Havasu Water Co., Quartzsite, McAllister Subdivision, City of Parker, Marble Canyon, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 15,146 acre-feet per year as recommended by the Arizona Department of Water Resources.

13. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment present perfected right of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishments perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

14. Imperial Irrigation District of Metropolitan Water District of Southern California, California: Construction and funding contract to conserve water along a portion of the All-American Canal in accordance with Title II All-American Canal Lining Act dated January 25, 1988.

15. Elsinore Valley Municipal Water District, SRPA, California: Repayment contract for a $22.3 million loan.

16. Cibola Valley Irrigation and Drainage District, BCP, Arizona: Amendment of current contract for additional Colorado River water; change in service areas to include lands owned by Ronald E. Swan and Lois C. Bishop, et al; diversion points; and RRA exemption.

17. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

18. Miscellaneous present perfected rights holders, BCP, Arizona and California: Contracts for entitlements of Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the BCP. Miscellaneous present perfected rights holders are listed in the *Arizona* v. *California* settlement.

19. Federal Establishment present perfected rights holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Quechan, and Cocopah Indian Tribes.

20. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

21. Havasu Water Company, Lower Colorado Water Supply Project, California: Temporary contract to convert a test well to a production well for no more than 200 acre-feet of Project water.

22. City of Yuma, BCP, Arizona: Contract amendment to add an additional point of diversion.

23. Fort McDowell Indian Community, SRPA, Arizona: Repayment contract for a $13 million loan.

24. Imperial Irrigation and Drainage District and Metropolitan WD of Southern California, BCP, California: Temporary contract to store approximately 200,000 acre-feet of water that is expected to be saved over a 2-year period under a test water conservation program that involves land fallowing and modified irrigation plan for alfalfa.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

7. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

8. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B work of selected project facilities.

9. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 5,165 acre-feet of project water for irrigation purposes.

10. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City of 3,000 acres; expand terms of water rights assignments from 25 years to 75 years; and allow assignments outside City limits under authority of the Public Service Board.

11. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory WCUA contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

12. James A. and Sandra J. Stratman, Blue Mesa Reservoir, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for domestic use of 1 acre-foot for 40 years.

13. Uintah Water Conservancy District, Vernal Unit, CUP, Utah: Repayment contract under safety of dams programs for the repair of Steinaker Dam.

14. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

15. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for 500 acre-feet for 1 year for municipal and domestic use.

16. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

17. Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water.

18. Department of Energy, Los Alamos, San Juan-Chama Project, New Mexico: Amendment to water service contract to increase Department of Energy allowance for O&M costs.

19. U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers: Water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually: Contract will define the terms and conditions associated with delivery of this water.

20. Rio Grande Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties: Contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use.

21. Bridge Valley Water Conservancy District, Lyman Project, Wyoming: Repayment contract under safety of dams program for the repair of Meeks Cabin Dam.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region: Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw Irrigation District, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

5. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Contingent upon passage of authorizing legislation, terminate the Cedar Bluff Irrigation District's repayment contract; use of the District's portion of the reservoir storage capacity will be sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

7. Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

8. East Bench Irrigation District, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work over a 10-year period.

9. Glen Elder Irrigation District, Glen Elder Unit, P–SMBP, Kansas:

Negotiations for a long-term contract for agricultural water service from Waconda Lake.

10. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

11. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

12. Sargent Irrigation District, Middle Loup Division, P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,475,000.

13. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

14. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of up to $5,600,000.

15. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

16. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Contingent upon passage of authorizing legislation, negotiate amendatory contract to increase irrigable acreage within the project.

17. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

18. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Public Law 101–628 for the Lake Meredith National Recreation Area.

19. Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

20. Hidalgo County Irrigation District No. 6, Texas: SRPA contract for a 20-year loan for up to $5,712,900 to rehabilitate the District's irrigation facilities.

21. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

22. Shoshone, Heart Mountain, Willwood, and Deaver Irrigation Districts, Shoshone Project, Wyoming: R&B contract for loans totaling $7,500,000 to rehabilitate project irrigation facilities with the Shoshone Irrigation Project Joint Powers Board.

23. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of M&I conveyance capacity in the Fryingpan-Arkansas Project facilities.

24. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

25. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

26. City of Loveland, Colorado-Big Thompson Project, Colorado: Long-term M&I conveyance contract for conveyance of up to 12,000 acre-feet of city-owned water annually through Federal project facilities.

27. Belle Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota: Amendment to D&MC contract to extend work through 1995 and provide an additional $1 million to complete the work.

28. North Platte Project and Glendo Unit, P–SMBP, Wyoming and Nebraska contractors: Repayment contracts for safety of dam modifications.

29. State of Colorado, Armel Unit, P–SMBP, Colorado: Repayment contract for safety of dam modification.

Dated: July 22, 1992.

J. Austin Burke,

Assistant Commissioner.

[FR Doc. 92–17911 Filed 7–28–92; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Inv. 332–326]

Economic Integration in East Asia; Implications for the United States

AGENCY: United States International Trade Commission.

ACTION: Change in date of hearing.

FOR FURTHER INFORMATION CONTACT: Diane Manifold at 205–3271. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 205–2000.

SUPPLEMENTARY INFORMATION: In a notice published Wednesday, July 15, 1992 (57 FR 31386) the Commission announced two public hearings to be held on October 21 and October 28, 1992. One of those dates has been changed and the hearings will be held beginning at 9:30 a.m. on October 21 and October 22, 1992.

Authority: Section 332 of the Tariff Act of 1930, as amended.

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17908 Filed 7–28–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add a Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to name SMC Microtronic Co., Ltd. (SMC) of Hong Kong as an additional respondent.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 15, 1992, complainant SGS-Thompson Microelectronics, Inc. (ST) filed a motion to amend its complaint to name SMC as an additional respondent. Neither the existing respondents nor SMC opposed the motion. The Commission investigative attorneys supported ST's motion. On July 6, 1992, the presiding ALJ issued an ID (Order No. 33) amending the complaint and notice of investigation to add SMC as an additional respondent in this investigation. No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

By order of the Commission.

Issued: July 22, 1992.

[FR Doc. 92-17907 Filed 7-28-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-336]

Certain Single In-Line Memory Modules and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation with prejudice as to the remaining respondents. The Commission is retaining jurisdiction over the administrative protective order and related orders while it considers the issues of post-termination document retention and use of confidential business information obtained in this investigation by Commission employees in other investigations.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On June 9, 1992, complainant Wang Laboratories, Inc. filed a motion to terminate the investigation as to Mitsubishi Electronics America, Inc., Mitsubishi Electric Corporation, (collectively "Mitsubishi") NMB Technologies, Inc. and NMB Semiconductor Co., Ltd., (collectively "NMB"), the only respondents remaining in the investigation. The motion was supported by the Commission investigative attorneys (IAs), and opposed by Mitsubishi and NMB. On June 17, 1992, Wang filed a reply to respondents' opposition to termination of the investigation. On June 18, 1992, the IAs also filed a reply to respondents' opposition. On June 19, 1992, the presiding ALJ issued an ID terminating the investigation with prejudice as to the refiling of a section 337 complaint by Wang against the Mitsubishi or NMB respondents based on the same alleged unfair acts set forth in the complaint. On June 27, 1992, respondent NMB petitioned for review of the ID. On July 2, 1992, Wang filed an opposition to NMB's petition for review. On July 2, 1992, the IAs also filed an opposition to NMB's petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: July 22, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17906 Filed 7-28-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-540 and 541 (Final)]

Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-540 and 541 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason or imports from the Republic of Korea and Taiwan of certain welded stainless steel pipes,[1] provided for in subheadings 7306.40.10 of 7306.40.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* June 22, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain welded stainless steel pipes from the Republic of Korea and Taiwan are being sold in the United States at less than fair value within the meaning

[1] The merchandise subject to these investigations is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the investigations also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the flowing Harmonized Tariff Schedule (HTS) subheadings: 7306.40.1000, 7306.40.5010, 7306.40.5030, 7306.40.5050, and 7306.40.5070. Although these subheadings include both pipes and tubes, the scope of these investigations is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 18, 1991, by Avesta Sandvik Tube, Inc.; Bristol Metals; Damascus Tubular Products; Trent Tube Division, Crucible Materials Corp.; and the United Steelworkers of America.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on October 27, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on November 10, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 3, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 6, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is November 3, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is November 18, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 18, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 23, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17909 Filed 7–28–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 20, 1992, a proposed consent decree in *United States* v. *Cannons Engineering Corporation, et al.*, Civil Action No. 88–1786–WF, was lodged with the United States District Court for the District of Massachusetts. The decree resolves claims of the United States against defendant Scott Brass, Inc. ("Settling Defendant"), in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at three Superfund Sites. The three sites are the Cannons Engineering Superfund Site in Bridgewater, Massachusetts, the Plymouth Superfund Site in Plymouth, Massachusetts, and the Tinkham's Garage Superfund Site in Londonderry, New Hampshire (collectively, the "Sites").

In the proposed consent decree the Settling Defendant agrees to pay the United States approximately $75,000.00 in settlement of the United States' claims for past and future response costs incurred and to be incurred by the Environmental Protection Agency at the Sites. The proposed decree embodies a *de minimis* settlement under the terms of 42 U.S.C. 9622(g).

The proposed decree may be examined at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the decree, please enclose a check for $5.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cannons Engineering Corporation, et al.*, (DOJ Reference No. 90–11–3–105).

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–17834 Filed 7–28–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984 Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on June 15, 1992, pursuant to section 6(a) of the National Cooperative Research Act of

1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium (ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission. The notification discloses (1) the identities of the parties to the Consortium and (2) the nature and objectives of the Consortium. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Consortium and its general areas of planned activity are given below.

ILZRO has sought and received written commitments to participate in the Consortium from: ASARCO Inc., New York, NY; Billiton U.K. Ltd., Derbyshire, ENGLAND; Bitrod Corporation, Fenton, MO; Brunswick Mining & Smelting, New Brunswick, CANADA; Cominco Ltd., Toronto, CANADA; CMP Batteries Ltd., Bolton, ENGLAND (representing Compagnie Europeenne d'Accumulateurs, Clichy, FRANCE); C&D Charter Power Systems, Plymouth Meeting, PA; The Doe Run Company; St. Louis, MO; East Penn Manufacturing Co., Inc., Lyon Station, PA; GNB Industrial Battery Company, Lombard, IL; Hagen Battery AG, Soest, GERMANY (representing Tudor Group); Johnson Controls Inc., Milwaukee, WI; Met-Mex Penoles S.A. de C.V., Col. Cuauhtemoc, MEXICO; M.I.M. Holdings Ltd., Brisbane, AUSTRALIA; Mitsubishi Materials Corporation, Saitama, JAPAN; Mitsui Mining & Smelting Company Ltd., Tokyo, JAPAN; Pasminco Metals Pty. Ltd., Melbourne, AUSTRALIA; Yuasa Battery Company Ltd., Tokyo, JAPAN; and Yuasa-Exide Inc., Reading, PA. The Consortium has received verbal commitments from: Fiamm S.p.A., Montecchio, ITALY; Hawker Batteries Ltd., Market Harborough, UNITED KINGDOM; RSR Corporation, Dallas TX; Trojan Battery Company, Sante Fe Springs, CA; and Varta Batterie AG, Kelkheim/Ts., GERMANY; and O&C Corporation, Indianapolis, IN.

Participants will provide economic support, advice, and other assistance to the Consortium, which, as an ILZRO project, is subject to the oversight of the ILZRO Board of Directors.

ILZRO's current membership consists primarily of companies from the lead, zinc and affiliated industries. ILZRO is a non-profit, tax-exempt research organization whose functions include the management of research to improve existing uses and advance new applications for lead and zinc. The ALABC program has been established by ILZRO to carry out research and development into the use of the lead-acid battery in electric vehicles. The ALABC participants include companies who are not members of ILZRO.

The objective of the Consortium is to provide technology to accelerate the design and development of a lead-acid battery for immediate use in electric vehicles, together with the technology, related systems and equipment needed to support widespread usage of lead-acid batteries to power electric vehicles. Specifically, the Consortium will sponsor research and development programs aimed at producing a lead-acid battery system and related support systems with superior qualities for motive power uses and in high serial production volumes. The Consortium seeks to develop a lead-acid battery technology which will allow the mass production and sale of electric vehicles to consumers in the near future.

Membership in the Consortium remains open, and the parties intend to file additional written notification disclosing all changes in memberhsip to the Consortium.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17826 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Marathon Oil Company "1992 Horizontal Well Gravel Pack Program"

Notice is hereby given that, on June 26, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in a project titled the "1992 Horizontal Well Gravel Pack Program" filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objective of the research to be performed in accordance with said project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the 1992 Horizontal Well Gravel Pack Program, together with the nature and objectives of the research program, are given below.

The current parties to the 1992 Horizontal Well Gravel Pack Program Agreement are: Agip Spa, 21020 Milano, Italy; ARCO Oil and Gas Company, Plano, TX; BP Exploration Inc., Houston, TX; Chevron Oil Field Research Co., La Habra, CA; Conoco, Inc., Houston, TX; Dowell Schlumberger Incorporated, Tulsa, OK; Marathon Oil Company, Lafayette, LA; Oryx Energy Company, Dallas, TX; Petrobras, Rio de Janeiro, RJ Brasil 21910; Statoil, 4033 Forus Norway; and Texaco, Inc., Bellaire, TX.

The objective of the project is to collect, compile and distribute to the participants information and gravel pack data regarding procedures and methods of gravel packing horizontal oil wells using Marathon Oil Company's proprietary 100-ft., full-scale, high pressure wellbore model. The study will generate data useful for a cased-hole, gravel pack completion. Research and development work required in furtherance of this project is to be carried out by Marathon Oil Company.

Participation in this project is open to all parties meeting the conditions of the program agreement. The project commenced on February 18, 1992, and will last until all project work is completed, until the project is otherwise terminated, or until December 31, 1992, whichever occurs first. Information regarding participation in this project may be obtained from Dr. John A. Davis, Jr., Director of the Petroleum Technology Center, Marathon Oil Company, P.O. Box 269, Littleton, CO 80160-0269.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17832 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Pyrethrin Joint Venture

Notice is hereby given that on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Pyrethrin Joint Venture filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the corporate names of two members of the Pyrethrin Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Joint Venture member Fairfield American Corporation, Rutherford, NJ, has changed its corporate name and location to Roussel UCLAF Corporation, Englewood Cliffs, NJ, and Joint Venture member Prentiss Drug and Chemical Corporation, Floral

Park, NJ, has changed its corporate name to Prentiss Incorporated.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture. Membership in this Joint Venture remains open, and the members to the Joint Venture intend to file additional written notification disclosing all changes in membership.

On February 6, 1986, the Pyrethrin Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 18, 1986, 51 FR 9286. On April 15, 1991, the Pyrethrin Joint Venture filed an additional notification. The Department of Justice published the notice in the **Federal Register** in response to this additional notification on May 20, 1991, 56 FR 23089.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17829 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P., on July 6, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the identifies of additional parties to the Smart House Project ("the Project") and parties which have ceased to be involved in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovey of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project has changed, are given below.

The following parties no longer are involved in the venture: Edison Electric Institute, Washington, DC; Kenwood U.S.A. Corporation, Long Beach, CA; NEC Home Electronics (U.S.A.) Inc., Wood Dale, IL; Sanyo Fisher (USA) Corporation, Chatsworth, CA; Sharp Electronics Corporation, Mahwah, NJ; Staubli Corporation, Duncan, SC; Teknika Electronics Corporation, Fairfield, NJ; Toshiba America, Inc., Wayne, NJ; and Westinghouse Electric Corporation, Columbus, OH.

The following additional parties are now participating in the venture: ADEMCO, Syosset, NY; Carrier Corporation, Indianapolis, IN; Enerzone Systems Corporation, Dallas, TX; Powerline Control Systems, Northridge, CA; S-MOS Systems, San Jose, CA; Softdesk Inc., Henniker, NH; UGI Utilities, Inc., Lancaster, PA; and Voyager Security Systems, Morgan Hill, PA.

No other changes have been made in either the membership or the planned activities of the Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P., filed the original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 17, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, November 2, 1988, June 30, 1989, February 26, 1990, August 7, 1990, February 4, 1991, and November 4, 1991, Smart House, L. P., or its predecessor in interst, filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), January 28, 1986 (51 FR 3520), May 16, 1986 (51 FR 18049), August 28, 1986 (51 FR 30724), January 15, 1987 (52 FR 1673), May 8, 1987 (52 FR 17490), July 30, 1987 (52 FR 28494), September 22, 1987 (52 FR 35596), January 5, 1988 (53 FR 186), March 21, 1988 (53 FR 9154), May 3, 1988 (53 FR 15750), December 8, 1988 (53 FR 49614), August 23, 1989 (54 FR 35091), April 9, 1990 (55 FR 13199), September 6, 1990 (55 FR 36711), March 15, 1991 (56 FR 11273), December 23, 1991 (56 FR 66454), and May 29, 1992 (57 FR 22829), respectively.

The principal business address of the Project is 400 Prince Georges Boulevard, Upper Marlboro, MD 20772-8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17827 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 "Further Development of Molecular Sieves To Reduce Cold Start Emissions From Automobiles"

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "Further Development of Molecular Sieves to Reduce Cold Start Emissions from Automobiles." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 25, 1992) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On September 9, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1991, 56 FR 50729. A list of additional parties was published on May 29, 1992, 57 FR 22830.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17828 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—South Carolina Research Authority

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the South Carolina Research Authority ("SCRA") on June 8, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

The participants in the program, led by SCRA, Columbia, SC are: The Boeing Company (acting through its Defense & Space Group), Seattle, WA; Digital Equipment Corporation, Maynard, MA; Hughes Aircraft Company, Los Angeles, CA; Hewlett-Packard Company, Palo Alto, CA; Mentor Graphics, Wilsonville, OR; Martin Marietta (acting through its Electronics Information and Missiles

Group), Bethesda, MD; Rockwell International, Cedar Rapids, IA; and Versant Object Technology Corporation, Menlo Park, CA.

The objective of the program entitled "PREAMP" is to advance the state-of-the-art in product design and manufacture. The program will demonstrate the technology with electronic products and combine advance technologies, including capabilities in database management and knowledge engineering to provide a fully integrated standards-based, data-sharing, automated framework for concurrent engineering in the electronics industry. In addition, the program will define product and manufacturing process data models for use within the automated framework.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17833 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Finding of No Significant Impact for the consolidation of the San Jose Job Corps Center in San Jose, CA; Response to Comments

Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500 to 1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Job Corps, in accordance with 29 CFR 11.11(d), has prepared this project chronology and response to comments received regarding the Finding of No Significant Impact (FONSI) for the consolidation of the San Jose Job Corps Center (Center) in San Jose, California, published in the **Federal Register** on December 27, 1991. 56 FR 67105.

As noted in the FONSI, the present San Jose Job Corps Center operations are split between two separate locations within the City of San Jose—the main campus, in downtown San Jose, and the Conniff School site, in suburban San Jose. The purpose of the proposed action is to consolidate operations at one location, which involves relocating the main campus activities to the Conniff site. This will necessitate the rehabilitation and upgrading of existing facilities and some new construction. The Conniff site has been in continuous use by Job Corps since 1972, under a lease agreement with the alum Rock Union Elementary School District, and was used as a public school prior to that. In June 1986, DOL purchased the facility.

In June 1986, Job Corps made known it would purchase the Conniff site. At the same time, plans for the relocation and consolidation of the site were announced. Since then, Job Corps has undertaken a significant number of steps to respond to issues regarding the consolidation, including environmental concerns. The information which follows serves to highlight major steps which have taken place.

Throughout the period following announcement of the site's purchase, the Center's newsletter, the "Communicator," provided on-going information regarding both purchase of the Conniff site and plans for the Center consolidation. The "Communicator" is a monthly publication distributed to over 400 individuals in the San Jose area, including elected officials, heads of human services agencies, and those in the immediate area of the Conniff site. During this same time, the Center staff and Community Advisory Board (CAB) also initiated contact with key political leaders to inform them of the Center's progress toward consolidation.

Community outreach efforts were initiated with an open house at the Conniff site in December 1989, at which time the Center consolidation plans were discussed. There was active participation by members of the community.

On March 15, 1991, a press release was issued and contacts were made regarding community meetings to be held at the Conniff site. These meetings were held on April 4 and 6, 1991. Following the meetings, a number of questions were received from neighbors and other interested community members about the Center's plans. In response to these questions, the Center scheduled another community meeting on June 8, 1991, and also invited interested individuals to tour the main campus in downtown San Jose. The downtown site tour was held on May 21, 1991, and, on the same day, a letter announcing a June 8, 1991, meeting subsequently held, was distributed to the Conniff neighborhood. On July 9, 1991, a meeting was held by a committee representing all concerned parties, as a result of which the decision was made by DOL to redo the Environmental Assessment (EA) prepared in the mid-1980's.

DOL contracted an environmental firm, Optimum Services & Systems, Inc., (OSS) to conduct the EA. On July 31, 1991, neighborhood representatives met with OSS to identify concerns to be considered in the EA. The EA report was finalized and delivered to the National Office of Job Corps on November 7, 1991. Based on the EA, DOL made a Finding of No Significant Impact (FONSI) and announced the FONSI in the **Federal Register** on December 27, 1991. 57 FR 67105. On February 6, 1992, the Regional Office began distributing copies of the EA to all individuals in the Conniff neighborhood and all persons who requested it. The Department also arranged for a representative of the neighborhood group to receive copies of all background resource documents collected by OSS in preparing the EA. These materials were received by the neighborhood representative on March 18, 1992.

Subsequently, the period during which the record was kept open was extended from 30 to 60 days at the request of the neighborhood group. That period closed with no formal comments being received by DOL regarding consolidation activities at the Conniff site, although some have been received since then.

The EA made a number of specific recommendations regarding noise, traffic, aesthetics, archeology, and history. In response to one EA recommendation, an archeological assessment was performed on December 10, 1991, with reporting completed on January 8, 1992. Based on the data derived from the records, the literature search, and the field survey, it was determined that no cultural resources which are listed or eligible for listing on the National Register of Historic Places will be impacted by the proposed project. The study recommended that the project proceed with no additional cultural resource investigation.

In addition, in response to recommendations and contracts between the Center and neighbors, Job Corps has made a number of revisions to project plans, including changes to bus routings and bus turnaround areas, additional plantings to increase visual privacy, improving outside lighting, noise insulation, addition of security staff, and redesign of the site to provide more off-street parking for Center staff.

All questions and comments received have been reviewed and addressed by DOL and are included in the administrative record. Highlights of the most significant questions and responses are provided here.

1. Police protection, particularly jurisdiction and response time, has been raised as a concern. Specifically, some residents have expressed concern about

Job Corps students roaming the community unchaperoned

Discussions about police security are provided in sections IV.B.7.b and V.B.7 of the EA. As noted therein, because the Conniff site is within the incorporated limits of the City of San Jose, police service is the responsibility of the City Police Department. Services to the community surrounding the Conniff site are provided by the Santa Clara County Sheriff's Department. In the event of an emergency, the county Communications Dispatcher can request service from the City of San Jose Police Department, the Santa Clara County Sheriff's Department, or the California Highway Patrol. A description of this working relationship was provided in appendix D of the EA.

Discussions regarding supervision of Job Corps students and on-Center security were provided in sections II.A.2, IV.B.7.b, V.A.5, and V.B.7 of the EA. With respect to the students, security guards will be on duty both day and night. The students are held responsible for their behavior through daily accountability checks and they are under the general supervision of the staff at all times.

2. Some members of the community have raised concerns about disturbance to the neighborhood from facility noise, particularly noise from student activities.

Discussions regarding possible noise from the consolidated facility were provided in sections V.A.5, VII.D.1, and VII.E.1 of the EA. Potential noise sources such as construction activities, vehicular traffic, student activities, and building appurtenances were discussed in the context of concerns both to the students of the consolidated Center and to neighbors in the surrounding residential community. Construction will be limited to the hours between 7 a.m. and 7 p.m. and exhaust equipment will be muffled during construction. Center staff and non-resident student vehicles will be used primarily during the morning and evening rush hours when local residents are also commuting; therefore, they should not contribute significantly to noise levels. No increase of bus traffic is expected.

With respect to student activities, during the day, students will be primarily in classrooms. In the late afternoons and evenings, students will have some free time to socialize in the dormitories, recreation buildings, and on the center grounds. Most of this activity is expected to be centered around the central court-yard area, where any noise generated will be mitigated by the center building arrangement and landscaping. Center staff will provide general supervision, and noise should not reach a level that would be a nuisance to the community surrounding the center.

3. The question of the zoning designation of the area for the consolidated facility and possible need for revision of designation has been raised.

Land use was discussed in sections IV.B.1 and V.B.1 of the EA. The specific zoning designation for the Conniff site is R–1–B–8, a special residential zoning. According to chapter 20.24 of the City zoning regulations, permitted uses include public and private schools. The Conniff site has been in continuous use as a day school since before 1972, first as a part of the Alum Rock School District and, since 1972, as a Job Corps Center. The proposed use of the Conniff site as a residential school is also consistent with the City of San Jose's planned use of that area, as discussed further below.

City planners and administrators have participated in the planning and development of the project from the beginning#. Further, as part of the EA study, OSS made a careful review of the City of San Jose's Horizon 2000 General Plan, which is the basic operational plan for the City. It represents official City of San Jose policy regarding the future character and quality of development. The Horizon 2000 General Plan designates the Conniff site as a Public/Quasi-Public category area in its Land Use/Transportation Diagram. This category is used to designate such public land uses as schools, colleges, corporation yards, homeless shelters, libraries, fire stations, convention centers, and hotels.

Section IV.B.2 of the Horizon 2000 General Plan also states that one of the goals of the Plan is to create more job opportunities for existing residents, particularly those who suffer from chronic unemployment, and to achieve parity between jobs and resident workers. The same section further states that it is the City's policy to cooperate with appropriate institutions and agencies in providing job opportunities for the economically, physically, and socially disadvantaged.

Section VI.A of the Horizon 2000 General Plan provides that the "land uses shown on the Land Use/Transportation Diagram are not, in all cases, reflective of the existing zoning of property. In such cases, the General Plan land use indicates the intent of the City as to what is the appropriate future zoning." Thus, the Horizon 2000 General Plan is the document that governs zoning decisions, not currently zoning categories.

For all of these reasons, the location of a residential Job Corps center at the Conniff site is consistent with the broad meaning and intent of the City as expressed by its application of the Public-Quasi-Public Land use category to the Conniff site.

4. A neighborhood group has expressed concern about the appropriateness of the site for the students and the neighborhood. In particular, some residents are concerned that recreational facilities "do not exist" within walking distance for the students.

There will be a recreation facility of the site, and there is a significant amount of on-site outside space that will be used for recreation. Provision is being made to adapt this space for on-Center recreational use. The Center does not intend to substitute neighborhood facilities for its own.

5. Some members of the community are concerned about use of the Conniff site should Job Corps leave in the future.

Sections VII.A and VII.B of the EA addressed the issues of short-term use versus long-term productivity and irreversible losses, respectively. As noted in these sections, the Conniff site is not presently being used to its full potential. The proposed project will constitute an improvement to the Conniff site, and no irreversible losses are associated with the proposed action.

6. Some community members have expressed concern about the appropriateness of the Conniff site for use as a Job Corps center, stating that a residential neighborhood was inappropriate and citing examples of Job Corps centers which are not located in such neighborhoods.

The concern that the site is an inappropriate choice for a Job Corps center because of its relative population density and its location within a single-family residential neighborhood is misplaced. There are Job Corps centers across the country with denser populations than the one proposed for the Conniff site, and many centers are located within residential neighborhoods. Furthermore, prior to the present consolidation project, the site was evaluated by a team of design and construction professionals and found to be well suited for Job Corps use.

7. Concerns have been expressed about sewerage facilities, and some community representatives state that sewer problems are common in the area, due to the "older system currently in place." Some residents state that adding a permanent housing facility for 360 or more people would only make the problem worse.

Discussions regarding sewage collection were provided in sections IV.B.6.b and V.B.6.b of the EA. Additionally, appendix E of the EA provided a letter from James W. Foley, Division Manager, Design and Construction Division, Department of Public Works, City of San Jose. In this letter, Mr. Foley states "the City's sanitary sewer collection system has adequate capacity to serve the proposed use of the site." While the letter stipulates the condition that no sewage from the proposed project may be "discharged to a sewer which ultimately discharges to the four-inch cast iron sewer main in Viewmont Avenue," the proposed project does not include any such discharge.

8. Some members of the community are concerned about access through the Conniff site.

In order to ensure the public's safety and protect the Federal Government's liability, the site will be closed to public access.

9. Some members of the community fear that increases in traffic from the Center will cause problems on local streets.

Discussions regarding transportation issues were provided in sections IV.B.6.e, V.B.6.e, VII.D.2 and VII.E.2 of the EA. These sections discussed issues such as Center bus approach and departure routes and parking areas for staff and non-resident students, as well as the effects of increased traffic on neighborhood streets. As noted in the EA, the increase in traffic volume is not expected to affect traffic flow on neighborhood streets.

The chronology presented above shows clearly that DOL has, in good faith, complied with all applicable regulations during its planning process. DOL has also demonstrated its commitment to an appropriate evaluation of potential environmental impacts (as stated in the FONSI). Responses to the FONSI, all of which were received after the expiration of the 60-day period during which the administrative record was held open, have been, nevertheless, considered, and to the extent they were persuasive, caused changes to be made. Therefore, the Department of Labor, Employment and Training Administration, Office of Job Corps, reaffirms the FONSI, that the consolidation of the San Jose Job Corps Center to the Conniff site in San Jose, California, will not cause any significant impact to the environment.

Dated at Washington, DC, this 23rd day of July, 1992.

Peter Rell,

Director of Job Corps.

[FR Doc. 92-17895 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated March 10, 1992, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Occupational Exposure to Bloodborne Pathogens, Final Rule, 29 CFR 1910.1030, as published in the **Federal Register** (56 FR 64175, dated December 6, 1991). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on January 8, 1992; hearing scheduled for January 30, 1992, comments were presented by the Iowa Dental Association; and resolution adopted by the Division of Labor Services on February 12, 1992, pursuant to Chapter 17a, Iowa Code. The standard was effective March 4, 1992; and notice of its adoption was published by the State on March 4, 1992.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; extension of partial stay and amendment of final rule, 29 CFR 1926.58, as published in the **Federal Register** (55 FR 3732, dated February 5, 1990). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on January 8, 1992; hearing scheduled for January 30, 1992 (no comments were received); and resolution adopted by the Division of Labor Services on February 12, 1992, pursuant to Chapter 17a, Iowa Code. The standard was effective March 4, 1992, and notice of its adoption was published by the State on March 4, 1992.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, room N3700, 200 Constitution Avenue, NW; Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. Public Participation

Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective July 29, 1992. (Section 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Kansas City, Missouri, this 7th day of May, 1992.

John T. Phillips,

Regional Administrator.

[FR Doc. 92-17897 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-26-M

Minnesota State Standards; Approval

Background. Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On June 8, 1973, notice was published in the **Federal Register** (38 FR 15076) of the approval of the Minnesota plan and the adoption of subpart N or part 1952 containing the decision.

The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the state prior to federal review and approval.

By notice published on March 16, 1992 in the Minnesota State Register (cited as 16 S.R. 2054) and incorporated as part of the plan, Minnesota has adopted State standards comparable to:

1. Occupational Exposure to Formaldehyde; Extension of Administrative Stay, as published in the **Federal Register**, Volume 56, No. 113 dated June 13, 1991; Volume 56, No. 153 dated August 8, 1991; and Volume 56, No. 219 dated November 13, 1991.

2. Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite; Extension of Partial Stay and Amendment of Final Rule, as published in the **Federal Register**, Volume 56, No. 171 dated September 4, 1991.

3. Safety Standards for Stairways and Ladders Used in the Construction Industry; Technical Amendments to the Final Rule, as published in the **Federal Register**, Volume 56, No. 164 dated August 23, 1991.

These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. No written comments or requests for hearing on objections were received concerning the proposed standards. The order of adoption was published in the State Register (16 S.R. 2054) on March 16, 1992, pursuant to Minnesota Statute 182.655 (1974).

Decision. Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and amendments are identical to the Federal standards and accordingly are approved.

Location of Supplement for Inspection and Copying. A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55155; and the Directorate of Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation. Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Minnesota State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective on July 29, 1992.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Chicago, Illinois, this 30th day of June.

Michael G. Connors,

Regional Administrator.

[FR Doc. 92-17896 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Grant and Cooperative Agreement Awards

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to four (4) organizations that applied for funding under the Corporation's announcement of funding availability published in 57 FR 1944, (May 6, 1992). These four grantees will provide representation to appellants before the United States Court of Veterans Appeals. A total of $900,000 will be awarded to the following grantees:

Name of Grantee	State	Amount
The Veterans Consortium	DC	$703,000
Disabled American Veterans	DC	50,000
National Veterans Legal Services Project/Paralyzed Veterans of America	DC	85,000
Swords to Plowshares	CA	62,000
Total		900,000

This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this thirty-day public comment period.

DATES: All public comments and recommendations must be received by the close of business on August 28, 1992.

ADDRESS: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Christopher Sundseth, Project Liaison, Office of Field Services, Legal Services Corporation (202) 336-8911.

July 23, 1992.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 92-17870 Filed 7-28-92; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Science Resources Studies; Notice of Amendment

The Special Emphasis Panel in Science Resources Studies is holding a meeting in Washington, DC on August 6, 1992. This meeting was announced in the Federal Register on July 16 (57 FR 31542) as a meeting opened to the public. The committee will be discussing the preparation of a draft congressionally mandated report. Information included in the report may involve discussion of data obtained from academic institutions which necessitates closing the meeting. The agenda for this meeting has been amended to read:

9–10 a.m.—Discussion of format of the report and presentation of the data. (Open)
10–5 p.m.—Review and discussion of a congressionally mandated report. (Closed).

Reason for Closing: The discussion could disclose data from individual institutions that is privileged or confidential. These matters are within exemptions (4) of 5 U.S.C. 552b(c) of the Government in the Sunshine Act.

Dated: July 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–17912 Filed 7–28–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–0299]

Umetco Minerals Corp. Gas Hills Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA–648 for the Gas Hills Mill to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-648, Umetco Minerals Corporation's Gas Hills Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires September 14, 1992.

ADDRESSES: Copies of the response from Umetco Minerals Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO, 80225.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303–231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 22, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1995, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA–648 to incorporate the schedules proposed by the licensee by adding License Condition No. 59 as follows:

59. The licensee shall complete site reclamation in accordance with the approval reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 54 and 58, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile:

For the Inactive Impoundment—complete.
For the A–9 Impoundment—December 31, 1993.
For the Heap Leach Impoundment—December 31, 1993.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion:

For the Inactive Impoundment—complete.
For the A–9 Impoundment—complete.
For the Heap Leach Impoundment—complete.

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background:

For the Inactive Impoundment—December 31, 1995.
For the A–9 Impoundment—December 31, 1995.
For the Heap Leach Impoundment—December 31, 1995.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40:

For the Inactive Impoundment—December 31, 1996.
For the A–9 Impoundment—December 31, 1996.
For the Heap Leach Impoundment—December 31, 1996.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1996.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 7th day of July 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall, Director,

Uranium Recovery Field Office.

[FR Doc. 92–17910 Filed 7–28–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension

Rule 15a–4—File No. 270–7.
Rule 15b1–2—File No. 270–12.
Rule 15b1–4—File No. 270–9.
Rule 15b6–1 and Form BDW—File No. 270–17.
Proposed Rule 15c2–10—File No. 270–324.
Rule 17a–1—File No. 270–244.
Rule 17a–3—File No. 270–26.
Rule 17a–4—File No. 270–242.
Rule 17a–7—File No. 270–147.
Rule 17Ad–6—File No. 270–151.
Rule 17Ad–7—File No. 270–152.
Rule 19d–1—File No. 270–198.
Rule 19h–1—File No. 270–247.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*):

Rule 15a–4, grants a temporary exemption from broker-dealer registration to certain members of national securities exchanges if the exchange files a statement with the Commission. Approximately 20 exchanges incur an average annual burden of 8 hours to comply with this rule.

Rule 15b1–2, requires a statement of financial condition to be filed with an application for registration as a broker-dealer. Approximately 3000 broker-dealers incur an average annual burden of 3 hours to comply with this rule.

Rule 15b1–4, permits a fiduciary who succeeds to the business of a registered broker-dealer and files a statement with the Commission to continue to operate the broker-dealer's business without submitting a separate application for registration as a broker-dealer. Approximately 5 fiduciaries incur an average burden of 5 hours per year to comply with this rule.

Rule 15b6–1, requires notice to be filed on Form BDW by a broker-dealer who wishes to withdraw from registration. Approximately 847 broker-dealers incur an average burden of one-half hour per year to comply with this rule.

Proposed Rule 15c2–10, would require sponsors of proprietary trading systems to provide the Commission with certain information relating to the systems' operations, and to maintain certain records. Approximately 16 sponsors would incur an average burden of 210 hours per year to comply with this rule.

Rule 17a–1, requires certain self-regulatory organizations to maintain records relating to their self-regulatory activities, and to make these records available to the Commission on request. Twenty-six respondents incur an average burden of approximately 50 hours per year to comply with this rule.

Rule 17a–3, requires certain exchange members, brokers and dealers to maintain specified records. Approximately 6000 firms incur an average burden of 249 hours per year to comply with this rule.

Rule 17a–4, requires broker-dealers to preserve certain records required to be maintained by Rule 17a–3 and other rules. Approximately 8800 broker-dealers incur an average burden of 250 hours per year to comply with this rule.

Rule 17a–7, requires foreign broker-dealers registered with the Commission to maintain copies of their books and records in the United States, or to agree to make them available on request. Three broker-dealers incur an average burden of one hour per year to comply with this rule.

Rule 17Ad–6, requires registered transfer agents to maintain certain records. Approximately 1700 transfer agents incur an average burden of 480 hours per year to comply with this rule.

Rule 17Ad–7, requires registered transfer agents to preserve certain records required to be maintained by Rule 17Ad–6 and other rules. Approximately 1700 transfer agents incur an average burden of 114 hours per year to comply with this rule.

Rule 19d–1, requires a self-regulatory organization to file notice with the Commission upon taking any final disciplinary action. Nineteen self-regulatory organizations incur an average burden of 20 hours per year to comply with this rule.

Rule 19h–1, requires a self-regulatory organization to file notice with the Commission when it proposes to admit a person to, or continue a person in, membership or participation notwithstanding a statutory disqualification with respect to that person. Three self-regulatory organizations incur an average burden of 150 hours per year to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17840 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18857; International Series Rel. No. 426; 812–7916]

The Latin American Investment Fund, Inc., et al.; Notice of Application

July 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Latin America Investment Fund, Inc., The Latin America Equity Fund, Inc., The Chile Fund, Inc., The Brazilian Equity Fund, Inc., The Emerging Markets Telecommunications Fund, Inc., and any similar investment fund formed in the future with authority to invest in Latin America for which BEA Associates serves as investment adviser (the "Funds"); and BEA Associates (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Funds to co-invest, with one another and certain offshore funds advised by the Adviser, in Latin American securities acquired through privately-negotiated transactions.

FILING DATE: The application was filed on May 6, 1992 and amended on July 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1992, and should be

accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Citicorp Center, 153 East 53rd Street, 58th Floor, New York, New York 10022–4669.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is close-end, non-diversified, management investment company registered under the Act. The initial public offering of the shares of each Fund was registered under the Securities Act of 1933, and the shares of each Fund are listed for trading on the New York Stock Exchange.

2. The Adviser serves as investment adviser to each of the Funds. The Adviser, a general partnership organized under New York state law, is registered under the Investment Advisers Act of 1940. The Adviser has sole investment discretion for each Fund and makes all decisions affecting assets in the Funds' portfolios, under the supervision of each Fund's Board of Directors ("Board") and in accordance with each Fund's stated policies, except that Salomon Brothers Asset Management, Inc. acts as investment adviser to The Latin American Investment Fund, Inc. with respect to sovereign debt investments.

3. In addition to serving as adviser to the Funds, the Adviser also serves as investment adviser to six investment funds, authorized to invest in Latin American securities, which are not required to be registered under the Act (a) pursuant to section 3(c)(1) because their outstanding securities are beneficially owned by less than 100 persons, or (b) because they are not organized or otherwise created under the laws of the United States or any state, have not made use of the mails or any means or instrumentality of interstate commerce in connection with any public offering of their securities, and their outstanding securities are beneficially owned by less than 100 U.S. persons. These funds, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or its affiliates in the future, are designated herein as the "Offshore Funds."

4. Each Fund invests primarily in securities issued by issuers located in one or more countries in Latin America.[1] Each Fund invests, in accordance with the investment policy set forth in its prospectus, in a combination of equity securities and corporate and government debt securities of Latin American issuers. Each Fund invests in listed and unlisted securities, except for The Brazilian Equity Fund, Inc. which invests only in listed securities.

5. Applicants request an order of the Commission to permit any one or more Funds to make investments through privately-negotiated transactions, concurrently with one or more other Funds and/or one or more Offshore Funds (a "Co-Investment"), subject to the conditions set forth below.

6. The securities markets of Latin American countries are substantially smaller and less liquid than the major securities markets in the United States. A high proportion of the shares of many Latin American companies may be held by a limited number of persons, thus limiting the shares available for investment by a Fund. The ability to co-invest will benefit the Funds by increasing favorable investment opportunities available to them. Co-investing will permit the funds to participate in investment opportunities from which they would otherwise be precluded by their size, increase the diversification of their portfolio holdings, and perhaps invest on more favorable terms.

7. In order to avoid conflicts of interest, the ability of a Fund to enter into a Co-Investment with respect to a portfolio company in which another Fund, an Offshore Fund, the Adviser or any of their affiliates has an interest prior to the receipt of the order requested by this application is prohibited. Additionally, the Funds and the Offshore Funds will not acquire different classes of securities from the same issuer unless securities of each class are acquired by each party in amounts proportionate to each other and on identical terms.

[1] Latin America for purposes of the application consists of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela.

Applicants' Legal Conclusions

1. Section 17(d) of the Act and rule 17d–1 thereunder require an order of the Commission before an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, may participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company, or a company controlled by such registered company is a participant. Where two investment companies have in common an investment adviser, directors, and/or officers, the companies may be considered to be under common control and, therefore, "affiliated persons" of each other as defined in section 2(a)(3) of the Act.

2. The terms of the proposed arrangements are not less advantageous to any Fund than they are to any other such Fund or any Offshore Fund, and vice versa. The proposed Co-Investments will be consistent with the provisions, policies and purposes of the Act since each Fund will be offered the opportunity to participate in the transactions with each other participating Fund or Offshore Fund on an identical basis. For these reasons, applicants assert that their proposal meets the standards for granting exemptive relief under section 17(d) and rule 17d–1.

3. Applicants also seek an exemption pursuant to section 6(c). Applicants submit that it would be impractical to attempt to obtain separate exemptive relief for each Co-Investment. Furthermore, Applicants submit that the exemption sought would be "consistent with the protection of investors" and with "the purposes fairly intended by the policy and provisions of [the Act]," as required by section 6(c), because given the respective roles played by each Fund, each Fund's Board, and the Adviser, the conflicts of interest that rule 17d–1 was designed to prevent are simply not present.

Applicant's Conditions

Applicants agree that any order of the Commission permitting the Co-Investments will be subject to the following conditions:

1. No Co-Investments (except for follow-on investments made pursuant to condition 8 below) will be made pursuant to the requested order with respect to portfolio companies in which the Adviser, any Fund or Offshore Fund, or any of their affiliates has previously acquired an interest.

2. The Boards of each Fund will be comprised of a majority of non-interested directors. The Board of each Fund participating in a Co-Investment, including a majority of the non-interested directors, will approve Co-Investments in advance. To facilitate each Board's determinations, the Adviser will provide the Board of a Fund with periodic information listing all investments made by the other Funds and the Offshore Funds that would be suitable for investment by a Fund, other than those effected on an exchange or in an over-the-counter market.[2]

3. (a) Before a Co-Investment, the Adviser will make a preliminary determination as to whether each particular Co-Investment opportunity meets an individual Fund's applicable investment objective, policies and restrictions. A particular Co-Investment will be deemed eligible for investment by all Funds for which the Adviser makes a favorable determination ("eligible Funds"). Co-Investment opportunities will be offered to eligible Funds in amounts proportionate to total assets. The Adviser will maintain written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed Co-Investment will be distributed to the Board of each eligible Fund. Such information will be presented in written form and will include the name of each eligible Fund and the maximum amount offered each eligible Fund.

(c) Information regarding the Adviser's preliminary determinations referred to in (a) will be reviewed by the Board of each eligible Fund, including the non-interested directors. Each Board, including a majority of the non-interested directors, will make an independent decision as to whether to participate and the extent of participation in a Co-Investment based on such factors as are deemed appropriate under the circumstances. If a majority of the non-interested directors of a Fund determines that the amount proposed to be invested by the Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, the Fund will not participate in the Co-Investment. Similarly, a Fund will not participate in a Co-Investment if a majority of the non-interested directors of the Fund determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances, although the non-interested directors of a Fund may make a determination that the Fund take other than their allotted portion of an investment, pursuant to condition 5 below. A Fund will only make a Co-Investment if a majority of the non-interested directors of the Fund prior to making the Co-Investment conclude, after consideration of all information deemed relevant (including the extent to which such participation is on a basis different from or less advantageous than that of other participants), that the investments by any other participant Fund or participant Offshore Fund would not disadvantage the Fund in the making of such investment, in maintaining its investment position or in disposing of such investment, and that participation by the Fund would not be on a basis different from or less advantageous than that of any other participant Fund or participant Offshore Fund. The non-interested directors of a Fund will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed Co-Investment.

(d) The non-interested directors of a Fund will, for purposes of reviewing each recommendation of the Adviser, request such additional information from the Adviser as they deem necessary for the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate for the reasonable exercise of this oversight function.

4. The directors of a Fund, including a majority of the non-interested directors, will make their own decision and have the right to decide not to participate in a particular Co-Investment. There will be no consideration paid to the Adviser or its affiliates, directly or indirectly, including without limitation any type of brokerage commission, in connection with a Co-Investment. However, the Adviser and its affiliates will continue to receive advisory and other fees from the Funds and the Offshore Funds and may participate indirectly in a Co-Investment through their existing interests in a Fund or an Offshore Fund.

5. Each Fund and each Offshore Fund will be entitled to purchase a portion of each Co-Investment equal to the ratio of a participating Fund's or Offshore Fund's, as the case may be, total assets to the total assets of each other Co-Investment participant. Any Co-Investment participant may determine not to take its full allocation, as long as, in the case of a Fund, a majority of the non-interested directors determines that not doing so would be in the best interest of the Fund. All follow-on investments (as defined in condition 8 below), including the exercise of warrants or other rights to purchase securities of the issuer, will be allocated in the same manner as initial Co-Investments. If a Fund or an Offshore Fund decides to participate in a Co-Investment opportunity to a lesser extent than its full allocation, that entity's portion may be allocated to the other Co-Investment participants based on their respective total assets. If one or more Funds decline to participate in a Co-Investment opportunity, the remaining Funds and the Offshore Funds shall have the right to pursue such investment independently. Similarly, if one or more Offshore Funds decline to participate in a Co-Investment opportunity, the remaining Offshore Funds and the Funds shall have the right to pursue such investment independently.

6. Co-Investments in securities by a Fund with any other Fund or Offshore Fund will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, purchased at the same unit consideration, and the approval of such transactions, including the determination of the terms of the transactions, by the Fund's non-interested directors will be made in the same time period.

7. Except as described below, the Funds and the Offshore Funds will participate in the disposition of securities held by them as Co-Investments on a proportionate basis at the same time and on the same terms and conditions (a "lock-step" disposition). For this purpose, a distribution of securities to the partners or shareholders of an Offshore Fund upon dissolution shall not be deemed a "disposition" of securities. (However, to the extent that an Offshore Fund distributes securities in dissolution to partners or shareholders who are affiliates of the Funds, such partners or shareholders will be bound by the lock-

[2] Although over-the-counter market transactions may be broadly defined to include every transaction other than those actually occurring on a securities exchange, for purposes of this application, the term means an organized market of broker-dealers regularly buying and selling securities through a communications network. It specifically excludes isolated purchase and sale transactions (referred to herein as "privately-negotiated transactions"), the terms of which are individually negotiated between an issuer and an investor or small group of investors or between investors directly without the involvement of a broker or dealer and the use of an organized trading facility. Since transactions on an exchange or over-the-counter market can be effected at a price available to all market participants at any time, disclosure about these types of transactions would not provide any benefit to the Funds in evaluating compliance with the conditions contained in the application.

step disposition procedures established herein.) If a Fund or an Offshore Fund elects to dispose of a security purchased in a Co-Investment with one or more Funds or Offshore Funds, notice of the proposed sale will be given to the non-interested directors of the relevant Fund(s) and to the relevant Offshore Fund(s) at the earliest practical time. The Funds and the Offshore Funds will participate in the disposition of such security on a lock-step basis, unless the non-interested directors of a Fund determine that the Fund should not participate in such sale or not participate on a lock-step basis. A Fund need not participate on a lock-step basis in the disposition of securities sold by any other Fund or an Offshore Fund if the non-interested directors of the Fund find that the retention or sale, as the case may be, of the securities is fair to the Fund and that the Fund's participation or choice not to participate in the sale on a lock-step basis is not the result of overreaching by any other Fund or Offshore Fund. If such a finding is not made, then the relevant Fund must participate in such sale on the basis of a lock-step disposition. Like a Fund, an Offshore Fund may elect not to participate in a sale of securities held as Co-Investments or not to participate on a lock-step basis. If at any time the result of a proposed disposition of any portfolio security held by a Fund or an Offshore Fund would alter the proportionate holdings of each class of securities held by the other Funds and Offshore Funds holding the Co-Investment, then the non-interested directors of the Fund or Funds involved must determine that such a result is fair to the relevant Fund(s) and is not the result of overreaching by any other Fund or Offshore Fund. The non-interested directors will record in the records of the Funds the basis for their decisions as to whether to participate in such sale.

8. If a Fund or an Offshore Fund determines that it should make a "follow-on" investment (i.e., an additional investment in a portfolio company in which a Co-Investment has been made pursuant to the order requested hereby) in a particular portfolio company whose securities are held by it and one or more Funds, or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such other Fund(s), including its or their non-interested directors at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by a Fund in a follow-on investment and provide the recommendation to the non-interested directors of the Fund along with notice of the total amount of the follow-on investment. Each Fund's non-interested directors will make their own determination with respect to follow-on investments. Follow-on investments will be entered into on the same basis as initial Co-Investments and will be subject to the same approval procedure as those required for initial Co-Investments. Assuming that the amount of a follow-on investment available to a Fund is not based on the amount of the Fund's initial Co-Investment, the relative amount of investment by each Fund participating in a follow-on investment will be based on a ratio derived by comparing the total current assets of each participating Fund and Offshore Fund with the total amount of the available follow-on investment. Each Fund will participate in such investment if a majority of its non-interested directors determines that such action is in the best interest of the Fund. The non-interested directors of each Fund will record in their records the recommendation of the Adviser and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.

9. A decision by the directors of a Fund (i) not to participate in a Co-Investment, (ii) to take less or more than the Fund's full *pro rata* allocation or (iii) not to sell, exchange or otherwise dispose of a Co-Investment in the same manner and at the same time as another Fund or an Offshore Fund shall include a finding that such decision is fair and reasonable to the Fund and not the result of overreaching of the Fund or its stockholders by the Offshore Funds. The non-interested directors of each Fund will be provided quarterly for review all information concerning Co-Investments made by the Funds and the Offshore Funds, including Co-Investments in which the Fund declined to participate, so they may determine whether all Co-Investments made during the preceding quarter, including those Co-Investments they declined, complied with the conditions set forth above. In addition, the non-interested directors of each Fund will consider at least annually the continuing appropriateness of the standards established for Co-Investments by the Fund, including whether use of such standards continues to be in the best interest of the Fund and its shareholders and does not involve overreaching of the Fund or its shareholders on the part of any party concerned.

10. No non-interested director of a Fund will be an affiliated person of any Offshore Fund or have had, at any time since the beginning of the last two completed fiscal years of any Offshore Fund, a material business or professional relationship with any Offshore Fund.

11. Each Fund and each Offshore Fund will each bear its own expenses associated with the disposition of portfolio securities. The expenses, if any, of distributing and registering securities under the Securities Act of 1933 sold by one or more Fund and/or Offshore Fund at the same time will be shared by selling Fund(s) and Offshore Fund(s) in proportion to the relative amounts they are selling.

12. Neither the Adviser nor any of its affiliates (other than the Offshore Funds pursuant to any order issued on this application) nor any director of a Fund will participate in a Co-Investment with one or more Funds unless a separate exemptive order with respect to such Co-Investment has been obtained. For this purpose, the term "participate" shall not include either the existing interests of the Adviser or its affiliates in, or their management fee and expense reimbursement arrangements with, Offshore Funds.

13. Each Fund will maintain all records required of it by the Act, and all records referred to or required under these conditions will be available for inspection by the Commission. The Funds will also maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the Co-Investments were approved by the non-interested directors under section 57(f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17841 Filed 7-28-92; 8:45 am]

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[Release No. 34-30948; File No. SR-DTC-92-09]

Self-Regulatory Organizations; The Depository Trust Company; Filing of Proposed Rule Change Relating to the Establishment of an "Honest Broker" Mechanism

July 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1) (1988).

June 16, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing herewith a proposed rule change establishing an "honest broker" mechanism to, in extraordinary circumstances, facilitate the liquidation of securities that have been pledged by book-entry in DTC.

The proposed procedures are as follows:

Procedural Outline

i. DTC's honest broker procedures will be activated only upon a pledgor's request when pledgee banks are unwilling to return pledged securities directly to a pledgor and only at DTC's option after consultations with concerned parties indicate that such action is appropriate.[2] DTC will notify pledgees and DTC's participants of the activation of the honest broker procedures, and will advise its participants of the possibility that deliveries in settlement of their transactions with the pledgor, if any, may be received from the DTC honest broker participant account. In performing the role of honest broker, DTC will undertake no risk other than that arising from its own gross negligence.

ii. DTC will establish an honest broker participant account (the "DTC HB account") for the receipt and redelivery of the pledged securities.

iii. In operating the DTC HB account, DTC will be acting exclusively as agent for the pledgee banks delivering securities to that account.

iv. Each pledgee bank will have to notify DTC of its intent to use the honest broker mechanism and shall use DTC's Demand of Collateral procedures for pledged positions that such pledgee bank intends to deliver to the DTC HB account.[3]

v. By some specified time early enough in the day to ensure orderly settlement, the pledgor will send the information set forth below via DTC's Participant Terminal System ("PTS") to each affected pledgee bank (which will be able to view the information on the next business day via PTS) and to DTC.[4] The information, respecting transactions that the pledgor proposes to have settled through the honest broker mechanism on the next business day, shall consist of the following:

(A) The identity of each issue for which the pledgee bank is requested to deliver shares to the DTC HB account.

(B) For each issue, information as to the pledgor's transactions proposed to be settled that day by redelivery of the pledged positions (which information the pledgor shall furnish to DTC over PTS). Such information shall be in standard delivery order ("DO") format, and shall include for each delivery quantity, price, and settlement amount.

(C) With the information submitted to DTC only, the pledgor will also have to identify the DTC participant account to which each redelivery is to be made.

vi. DTC will provide to the pledgee banks on the morning of settlement day: (A) pricing information on short positions in National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") system; and (B) the aggregate delivery price for each issue (assuming that all of the shares are delivered).

vii. Based upon the above information, each pledgee bank can decide whether to deliver pledged positions to the DTC HB account, and will notify the pledgor and DTC accordingly.

viii. The pledgor will advise the DTC participants to which deliveries are to be made to expect those deliveries from the DTC HB account. Provided that no bankruptcy ruling or court imposed stay has occurred, shares will then be delivered from the DTC HB account with deliveries made in descending price-per-share order (other than deliveries to settle open NSCC CNS short positions, which will be effected first).[5] All settlement credits will be made to the DTC HB account.[6]

ix. For each issue, DTC will allocate on a *pro rata* basis to any pledgee banks that had delivered pledged securities to the DTC HB account: (A) any proceeds received from the redeliveries; and (B) any securities remaining in the account (including deliveries that were reclaimed or otherwise not completed).

Summary

In summary, a pledgee bank that had delivered pledged securities to the DTC HB account could be assured that at the end of the day:

(A) DTC would credit the pledgee bank with the bank's *pro rata* share of any proceeds received by DTC for redeliveries made in such issue; and

(B) DTC would allocate to the pledgee bank on a *pro rata* basis the bank's share of any securities that had not been redelivered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will, in extraordinary circumstances, facilitate the liquidation of securities positions that have been pledged by book-entry in DTC. Deliveries of these pledged positions would be made to DTC for redelivery to participants in settlement of their transactions with the pledgor (typically, a broker under financial stress). The objective of this mechanism is to assure any pledgee bank that delivers pledged securities to the honest broker (DTC) that at the end of the processing day the pledge bank will receive from DTC: (A) its *pro rata* share of any proceeds received by DTC for redeliveries made in such issue; and (B) its *pro rata* share of any securities that had not been redelivered.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder, and in particular Section 17A(b)(3)(A), because it promotes efficiencies in the clearance

[2] It may be appropriate to activate the procedures in the event of a pledgor's extended operational outage.

[3] Under DTC's Demand of Collateral procedures a pledgee bank can move securities from the pledgee's DTC pledge account to the general account of any DTC participant (other than the pledgor) including the DTC HB account or the bank's own participant account.

[4] Depending on operational considerations, it may be necessary to vary the timing set forth herein—possibly requiring notification by the pledgor and affirmation by the pledgee bank as early as the day prior to settlement.

[5] DTC will not process any free deliveries.

[6] DTC will make special arrangements with NSCC for the related money credits for the NSCC CNS short positions.

and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

An "honest broker" vehicle was used in February 1990 to liquidate securities that had been pledged by Drexel Burnham. At the request of a committee of senior executives from financial institutions, clearing organizations, and exchanges formed to identify and suggest improvements in payment and settlement practices (the "Payment and Settlement Committee" or "PSC"), DTC worked with the PSC's Honest Broker Subcommittee to develop the proposed rule change that is set forth above. On January 22, 1992, the full PSC reviewed and endorsed the proposal for release. On February 11, 1992, DTC issued a notice to its participants soliciting comments on the proposed rule change. The comments that were received were generally favorable, indicating that the proposed procedure would be an important step towards maintaining orderly and timely settlement during times of financial crisis. Various technical questions and questions as to future plans were raised, as were general questions relating to bankruptcy matters. DTC has been advised that the view of those bankruptcy law experts who have reviewed the proposal at DTC's request is that the proposal does not appear to raise any special bankruptcy concerns.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–92–09 and should be submitted by August 19, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17885 Filed 7–28–92; 8:45 am]

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[Release No. 34–30949; File No. SR–NASD–92–24]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Fee on Cleared Transactions

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The NASD is proposing to amend section 8 of Schedule A to the NASD By-Laws [1] to change the fee imposed on members for cleared transactions. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

* * * * *

Section 8—Fee on Cleared Transactions

Each member shall be assessed a *transaction* charge [not to exceed 12 cents per side] *of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875* for each over-the-counter transaction with another member of the Association *reportable through Act* [cleared through a registered clearing agency] in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 8 of Schedule A to the By-Laws, the NASD charges a fee on cleared transactions in over-the-counter equity securities. The rule imposes a fixed charge per trade side and is designed to recover some of the costs incurred in maintaining regulatory programs and monitoring trading in securities cleared through the National Securities Clearing Corporation ("NSCC").

Currently, the fee is based on NSCC

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[1] *NASD Securities Dealers, Manual*, CCH ¶ 1759.

trade reports that are limited to information which does not reflect all over-the-counter ("OTC") transactions. Other OTC transactions, such as internalized trades out of dealer inventory, and trades facilitated through the OTC Bulletin Board service for non-NASDAQ OTC securities, are not reported by NSCC and, thus, are not covered by the fee. Additionally, as a fixed charge per trade side, the fee may result in disproportionately higher costs for member firms who trade more frequently in smaller volume.

The NSCC has decided to discontinue providing the trade report upon which the billing for the regulatory fee is based. However, the recently implemented Automated Confirmation Transaction service (ACT) receives and compiles trade report data on virtually all OTC transactions, including internalized trades and the OTC Bulletin Board. ACT now provides a complete profile of all NASDAQ and third market trading data.

The proposed rule amends section 8 of Schedule A to extend the regulatory fee on cleared transactions between members to all transactions reportable through the ACT service and replaces a per side charge with a charge of $.0625 per 1,000 shares (equivalent to $.0000625 per share) coupled with minimum and maximum charge limits. The minimum charge of $.025 per side is equivalent to the per share charge multiplied by 400 shares, and the maximum charge of $.46875 per side is equivalent to the per share charge multiplied by 7500 shares. The current per side charge is $.12.

The proposed rule is consistent with the principle that the NASD's regulatory scope extends to all OTC transactions. The per share formula of the proposed rule, with maximum and minimum charges, also reflects the NASD's recognition that regulatory costs can be more equitably distributed among the members according to a formula based on the size of each transaction.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act.[2] In pertinent part, section 15A(b)(5) requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls. The NASD believes that, for the reasons stated above, the proposed rule change provides for the equitable allocation of reasonable fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective June 11, 1992 pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19(b)–4 thereunder in that it constitutes an amendment to a provision through which the NASD imposes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and augments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17886 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30955; File No. SR–NASD–92–23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Amending Schedule G to the By-laws to Require Use of a Special Indicator for Certain Pricing Formula Trades

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1992 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule G to the By-laws to require members to use a special indicator to denote transactions priced on an average-weighting or other special pricing formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[2] 15 U.S.C. 78o–3(b)(5) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 3, 1992, the Commission approved the NASD's proposal to extend the reporting hours specified in Schedule G for listed securities until 5:15 p.m., to coincide with the newly expanded hours of the Consolidated Tape Association ("CTA").[1] In addition, the Commission approved the use of a new identifier to denote agency cross trades that have been reported at a price based on an average-weighting or other formula rather than a current negotiated price. The NASD is submitting this rule change to establish that the indicator selected by the participants of the CTA to identify these specialized trade reports is the letter "B."

An example of a transaction warranting the indicator would be a trade negotiated during the trading day to be executed after 4 p.m. at a price equal to the average of weighted prices of transactions taking place during the trading day. Certain institutions find such a trade attractive because it ensures that they will not purchase at the high for the day or sell at the low. Trade reports such as these, although timely made, may not relate to the closing CTA price and carry no identifier describing their specialized nature. In order to alleviate confusion with regard to these trade reports, the NASD requested members to mark all such trades as ".SLD" pending approval of a permanent indicator by the CTA denoting the specialized sale condition and implementation of applicable amendments to Schedule G to codify the new requirement.

The NASD has notified vendors of the meaning of the new last sale "B" indicator and that the indicator will be available for vendor use on June 15, 1992, pending Commission approval.[2] The proposed amendment also clarifies that average priced trades occurring during the day should also carry the special "B" indicator.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. In addition, the proposed rule change furthers the objective set forth in section 11A(a)(1)(C)(iii) of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Reporting transactions in listed securities within 90 seconds after execution is required and the NASD believes that the use of special indicators for specially priced trades obviates investor confusion with regard to those transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The NASD believes that the proposed amendments are appropriate and necessary to avoid investor confusion regarding out of range trade prices. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and specifically, section 15(A)(b)(6) of the Act in that the amendments are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market. In addition, the Commission finds that the proposed rule change furthers the objective set forth in section 11A(a)(1)(C)(iii) of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The Commission also is approving the proposed rule change on an accelerated basis. In approving the NASD's proposal to require transaction reporting for exchange-listed securities until 5:15 p.m., the Commission encouraged the NASD to implement the new, permanent identifier as soon as practicable.

The Commission believes that accelerated approval is appropriate to avoid investor confusion with regard to trade reports that may reflect average-weighting prices. Thus, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed amendments to Schedule G to the NASD By-laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17887 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 30437 (March 3, 1992), 57 FR 8370.

[2] Members have also been notified that for input purposes, members will be required to attach a "W" indicator on incoming trade reports, as the "B" indicator in the Nasdaq system represents bunched trades. The Nasdaq system will read the "W" input and translate the modifier to "B" to transmit the trade report to SIAC and the vendors as "B."

[Release No. 34-30950; File No. SR-NYSE-92-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Changes Relating to Proposed Amendments to Rules 196, 199, 200, 201, 204, 205, 208, 209, 210 and 211 Regarding Implementation of a Signature Guarantee Program

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1992, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The text of the proposed rule changes consists of amendments to rules 196, 199, 200, 201, 204, 205, 209 and 210 pertaining to implementation of a "signature guarantee program" as contemplated by 17 CFR 240.17Ad–15 and the rescission as unnecessary or obsolete of rules 208 and 211.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The New York Stock Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Purpose

In order to facilitate compliance with transfer agents' requirements for verification of signatures on guarantees made by member organizations, the Exchange, under its existing signature service program, maintains an extensive file of sample authorized signatures provided by the participating organizations and makes these samples available to transfer agents.

Pursuant to rule 17Ad–15 recently adopted under the Act, transfer agents may reject signature guarantees from a guarantor that is not a participant in a "signature guarantee program" as contemplated by that rule. Non-participants in such a "signature guarantee program" risk rejection of transfers. The Exchange wishes to administer a "signature guarantee program" as contemplated by that rule, but has determined that its current signature service program may not qualify.

The purpose of the proposed rule changes is to enable the Exchange to convert its existing signature service program to a signature guarantee program contemplated under rule 17Ad–15 which uses medallion imprints in place of signatures in effecting assignments, powers of substitution, signature guarantees and other certifications and guarantees incident to the transfer, payment, exchange, purchase or delivery of certificates representing securities (including, but not limited to, erasure guarantees, one-and-the-same guarantees and situs certifications).

One aspect of the implementation of this program will be that the participants make certain indemnities and obtain insurance and a surety bond for the purpose of providing adequate protection to transfer agents against risk of financial loss under certain circumstances, as contemplated by rule 17Ad–15. The participants also will bear the Exchange's administrative expenses in connection with the program; accordingly, a charge to participants of $300 to be paid upon filing an application and annually thereafter has been approved by the Finance Committee of the Exchange's Board of Directors, pursuant to duly delegated authority.

Incidental to the foregoing purpose, the rule changes also reflect the consolidation and restatement of certain rules relating to guarantees, transfers and deliveries of securities, the elimination of certain unnecessary or obsolete rules and the amendments of certain cross-references altered by the changes.

(b) Statutory Basis

The proposed rule changes are consistent with section 6(b)(5) of the Act in that they generally are designed to foster coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities and to protect investors and the public interest by codifying appropriate means for effecting signature guarantees, assignments, powers of substitution and other certifications and guarantees incidental to securities transactions.

The proposed rule changes also are consistent with Section 17A(a)(1) of the Act in that they foster prompt and accurate clearance and settlement of securities transactions by facilitating the signature guarantee process and related activities.

In addition, the New York Stock Exchange believes that the proposed rule changes are in keeping with Section 17A(d)(5) of the Act and rule 17Ad–15 thereunder in that they facilitate implementation of a "signature guarantee program" as contemplated by that rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

The Exchange has requested that the Commission approve the proposed rule changes as soon as possible after the aforesaid date of publication and that such approval indicate that the proposed rule changes become effective on August 24, 1992.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17888 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30947; File No. SR-Phlx-92-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc., Amending the By-Laws Regarding the Board of Governors Term of Office and the Scheduling of the Annual Organizational Meeting

July 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on July 9, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby submits a proposed rule change to amend its By-Laws to provide for an extension of the term of office for members of the Board of Governors and to slate the organizational meeting of the Board following the annual election for the fourth Wednesday of March. These amendments are designed to provide the Chairman more time between the annual election and the first meeting of the Board of Governors thereafter to consider his recommendations to the Board for appointments to Standing and Special Committees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed By-Law amendments came at the suggestion of the recently elected Chairman who noted at the Board's organizational meeting following the annual election that he had insufficient time to deliberate, consult, and contact members and persons associated with member organizations respecting his recommendations to the Board for appointments to Standing and Special Committees. The proposed By-Law amendments provide an additional week between the annual election on the second Monday of March and the Scheduled organizational meeting of the Board on the fourth Wednesday of March.

The proposed By-Law amendments are designed to aid the governance process at the Phlx by allowing the Chairman adequate time to consider and make recommended selections to Standing and Special Committees to be appointed by the Board at its organizational meeting.

2. Statutory Basis

The proposed rule change is based on section 6(b)(3) of the Act in that it is designed to assure a fair representation of the Exchange members in the selection of Committees and to facilitate the proper administration of its affairs.

The proposed By-Laws amendments, in accordance with Phlx By-Laws Article XXII, section 22-2, were noticed to the membership by Circular #77-92, dated May 22, 1992. No written petitions were filed with the Office of the Secretary requesting a special meeting respecting the proposed amendments. The Phlx Board of Governors at its June 24, 1992 regularly scheduled meeting approved the adoption of the By-Law amendments as proposed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–92–17 and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17889 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18860; 812–7870]

North American Security Trust, et al.; Application

July 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Trust ("NAST") and NASL Series Trust ("Series Trust").

RELEVANT ACT SECTIONS: Order requested pursuant to sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act to the extent necessary to permit each present or future portfolio of NAST and Series Trust to engage in principal transactions with securities dealers that may be deemed to be affiliated persons of affiliated persons of the portfolio solely because of subadvisory relationships with one or more of applicants' other portfolios.

FILING DATE: The application was filed on February 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 695 Atlantic Avenue, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Series Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Series Trust has ten separate investment portfolios, all but one of which are diversified and each of which offers a separate series of shares of beneficial interest. Shares of Series Trust are not offered directly to the public. Rather, Series Trust currently serves as the underlying investment medium for funds invested in variable annuity contracts issued by North American Security Life Insurance Company ("Security Life"). Security Life is a wholly-owned subsidiary of North American Life Assurance Company, a mutual life insurance company based in Toronto, Canada.

2. NAST is a Massachusetts business trust registered under the Act as an open-end management investment company. NAST has nine separate, diversified investment portfolios, each of which offers a separate series of shares of beneficial interest to the public.

3. Currently, NAST and Series Trust have the same officers and trustees. In addition, NAST Financial Services, Inc. ("NASL Financial"), a registered broker-dealer and investment adviser and a wholly-owned subsidiary of Security Life, acts as the investment adviser of each portfolio of NAST and Series Trust. NASL Financial also serves as the distributor for NAST and as the principal underwriter of Security Life's variable annuity contracts that are funded by investment in the Series Trust.

4. Under the terms of its advisory agreements with Series Trust and NAST, NASL Financial selects, contracts with and compensates subadvisers for Series Trust's and NAST's investment portfolios (the "Subadvisers"). NASL Financial monitors the compliance of the Subadvisers with the investment objectives and related policies of each portfolio, reviews the performance of the Subadvisers, and reports periodically on their performance to the trustees. NASL Financial also provides certain administrative services and expense guarantees to Series Trust and NAST.

5. Applicants have a combined total of five Subadvisers. Oechsle International Advisors, L.P., a Delaware limited partnership, serves as Subadviser to the Global Equity and Global Government Bond portfolios of Series Trust and the Global Growth portfolio of NAST. Salomon Brothers Asset Management Inc, an indirect, wholly-owned subsidiary of Salomon Inc, serves as Subadviser to each applicant's U.S. Government Securities portfolio. Wellington Management Company, a Massachusetts partnership, serves as Subadviser to each applicant's Growth and Income, Investment Quality Bond, and Money Market portfolios. Fidelity Management Trust Company ("Fidelity"), a wholly-owned subsidiary of FMR Corp., serves as Subadviser to the Equity, Conservative Asset Allocation, Moderate Asset Allocation, and Aggressive Asset Allocation portfolios of Series Trust. Goldman Sachs Asset Management, a division of Goldman, Sachs & Co., a New York limited partnership, serves as Subadviser to the Growth, Conservative Asset Allocation, Moderate Asset Allocation, and Aggressive Asset Allocation portfolios of NAST. Each of the Subadvisers, except for Fidelity, is a registered investment adviser. Fidelity is not an investment adviser for purposes of the Investment Advisers Act of 1940, because it falls within the definition of "bank" as set forth in section 202(a)(2) of that act.

6. None of the Subadvisers is an affiliated person of any other of the Subadvisers. Each Subadviser directly or indirectly competes with each other Subadviser in the investment advisory business and certain of the Subadvisers directly or indirectly compete as securities dealers. None of the Subadvisers is an affiliated person of NASL Financial, Security Life, or any officer, trustee, or employee of either applicant, and none of the Subadvisers owns 5% or more of the shares of any portfolio of either applicant.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 17(b) and 6(c) of the Act to permit applicants to engage in principal transactions entered into in the ordinary course of business between any present or future portfolio of either applicant and any registered securities dealer which is not the Subadviser to the portfolio engaging in the transaction

and which is not an affiliated person (within the meaning of section 2(a)(3) of the Act) of (a) the portfolio engaging in the principal transaction, (b) the Subadviser of that portfolio, (c) NASL Financial, (d) any officer, trustee, or employee of either applicant, or (e) Security Life.

2. Section 17(a), among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, (a) from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property, or (b) from borrowing money or other property from such registered company. Section 17(b) provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Because NAST and Series Trust have the same investment adviser and the same trustees and officers, each of their portfolios might be deemed to be under common control with each other of their portfolios and, therefore, an affiliated person (within the meaning of section 2(a)(3) of the Act) of each other portfolio. While applicants do not concede that all portfolios of applicants are under common control, they assume, solely for purposes of this application, the existence of such control relationship so that each portfolio of each applicant may be deemed to be an affiliated person of each other portfolio. Accordingly, because a Subadviser is an affiliated person of any of applicants' portfolios that it manages, it may be deemed to be an affiliated person of an affiliated person of any of applicants' portfolios that it does not manage.

4. Each Subadviser, as an affiliated person of each portfolio it manages and as an affiliated person of an affiliated person of each other portfolio, is prohibited by section 17(a) of the Act from engaging in principal transactions with any of the portfolios. Section 17(a) may also prohibit wholly-owned subsidiaries of a Subadviser, parents of a Subadviser, and wholly-owned subsidiaries of such parents from engaging in principal transactions with portfolios not managed by such Subadviser. The only type of principal transaction that would be permitted under the requested order is one that might be deemed to be prohibited by section 17(a) solely because of a registered securities dealer's direct or indirect subadvisory relationship to a portfolio other than the one engaging in the transaction.

5. Applicants assert that under the terms of the requested order, a Subadviser would not be able to cause a portfolio to trade with an affiliated person of anyone with the theoretical or actual power to affect its business relationship as Subadviser to the portfolio. In each transaction permitted by the requested relief, the Subadviser would be dealing, on behalf of the portfolio it managed, with an entity that, in economic reality, is a competitor of that Subadviser. Each such transaction would be the product of arms-length bargaining between competitors. Applicants submit that this is not a situation where a controlling person of an investment company might try to circumvent the prohibition against self-dealing by acting through an affiliate. Applicants state that it would be contrary to the interests of applicants' shareholders to create artificial barriers to dealing with any registered securities dealer where there is not the possibility of self-dealing.

6. Applicants believe that the proposed transactions will meet the standards of section 17(b). Because there will be no conflict of interest inherent in a Subadviser's decision to execute a portfolio transaction with a dealer that is an affiliated person of an affiliated person of the portfolio solely because of a subadvisory relationship with one or more of applicants' other portfolios, there is no danger of overreaching on the part of any person concerned with the transaction. Because the pecuniary interests of the portfolio's Subadviser are solely and directly aligned with those of the portfolio, it is reasonable to conclude that the consideration to be paid or received by the portfolio will be reasonable and fair. Moreover, transactions permitted by the requested order will be consistent with the policies of the portfolio involved, inasmuch as each Subadviser is required by its agreement with NASL Financial to formulate and implement a continuous investment program for each portfolio consistent with the investment objectives and related investment policies for each such portfolio as described in the registration statement of the particular applicant. Finally, applicants argue that permitting the proposed transactions will be consistent with the general purposes of the Act, because the ability to engage in such transactions increases the likelihood of applicants' portfolios achieving the best price and execution on their principal transactions.

7. Based upon the foregoing, applicants believe that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to issue an order pursuant to sections 6(c) and 17(b) of the Act exempting principal transactions of the type for which relief is requested from the provisions of section 17(a) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17890 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18859; 811-5766]

T. Rowe Price International Equity Fund, Inc.; Application for Deregistration

July 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: T. Rowe Price International Equity Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on August 17, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Maryland. On February 13, 1989, applicant registered under the Act by filing a Notification of Registration pursuant to section 8(a). On this same date, applicant filed a registration statement on Form N–1A, pursuant to section 8(b) of the Act, and registered an indefinite number of shares under the Securities Act of 1933. Applicant's registration statement was declared effective, and its initial public offering commenced, on May 1, 1989.

2. On February 12, 1992, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Reorganization") between the applicant and the "Scudder Portfolio") of the Scudder Variable Life Investment Fund, a Massachusetts business trust. The board of directors determined that the Reorganization was in the best interest of applicant's shareholders and recommended that shareholders approve the Reorganization. On or about March 19, 1992, proxy materials relating to the Reorganization were distributed to applicant's shareholders. The Scudder Portfolio included such proxy materials as part of the Proxy Statement/Prospectus it filed on Form N–14 in connection with the Reorganization. At a special meeting held on April 23, 1992, the holders of a majority of applicant's outstanding shares approved the Reorganization.

3. On April 27, 1992 (the "Closing Date"), applicant transferred its assets, having an aggregate net asset value of $9,012,873, to the Scudder Portfolio in exchange for shares issued by the Scudder Portfolio. Immediately thereafter, such shares of the Scudder Portfolio were distributed to the shareholders of the applicant. As a result of the exchange, each of applicant's shareholders owned shares of the Scudder Portfolio having an aggregate net asset value equal to the net asset value of shares of the applicant owned by the shareholder immediately prior to completion of the Reorganization.

4. Applicant paid all expenses, fees, and other charges related to the Reorganization. Such expenses, consisting of legal and accounting expenses, totaled approximately $5,000. Unamortized organizational expenses totaling $6,200 were borne by Rowe Price-Fleming International, Inc., applicant's investment adviser.

5. Applicant filed Articles of Transfer and Articles of Dissolution with the State of Maryland on April 27, 1992.

6. At the time of filing of the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17891 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Ripley-Corinth 161-kV Transmission Line

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practicable alternative to impacting wetlands.

SUMMARY: The Tennessee Valley Authority (TVA) proposes to construct a 161-kV transmission line connecting TVA's Ripley, Mississippi, 161-kV substation and Corinth, Mississippi, 161-kV substation. An environmental assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 33 acres of wetlands; however, it has been determined that no practicable alternative exists. TVA is requesting public comment on the impact to wetlands.

DATES: TVA will consider all relevant comments received by August 12, 1992, before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority at (615) 632–6578.

SUPPLEMENTARY INFORMATION: TVA has transmission system weaknesses that could result in a power outage to most of Tippah Electric Power Association (EPA) during the summer demand peak. Tippah EPA is a distributor of electric power in north central Mississippi. The Tippah system is dependent on a 20-mile-long transmission line from New Albany 161-kV substation to Ripley 161-kV substation, without an alternate source of supply. The swampy and stormprone nature of the area exacerbates service reliability.

This project would provide a second 161-kV power feed to the Tippah EPA system to improve reliability of power service. A new 161-kV transmission line is proposed to be built from Ripley substation to Corinth substation—a distance of approximately 31.25 miles. New facilities would also be added to both substations. The transmission line route would also go across an intermediate site in Kossuth to allow Alcorn County Electric Power Association (EPA) to build a 161-kV substation and take delivery from the new line. The proposed Ripley-Corinth transmission line would have an in-service date of November 1, 1994.

Construction of the proposed transmission line would result in right-of-way clearing and vegetation removal affecting approximately 33 acres of wetlands. Placement of structures within the wetlands may be avoided. Following construction, vegetation on these wetland rights-of-way would be managed so as to impede normal successional patterns. This successional intervention on forested wetlands could worsen impacts of previous clearing.

Other wetland values and functions unrelated to forest canopy vegetation would remain intact through use of Best Management Practices (BMPs) for construction and maintenance.

The proposed transmission line route has been selected to avoid wetlands as much as practical. Crossings of the Little Hatchie, Hatchie, and Tuscumbia Rivers are unavoidable and account for most of the wetland acreage to be impacted. The state of Mississippi, in a letter dated August 29, 1991, requested that TVA avoid routing the transmission line through Kellum Hollow. This has been accomplished by moving the route of the proposed transmission line to the southeast onto the adjacent ridge.

Wetland impacts would be further minimized through application of the following BMPs for clearing, construction, and maintenance, on these forested wetlands. These BMPs would include:

1. Identified wetlands, streams, and drainways would not be modified so as to alter natural hydrological patterns.

2. Naturally occurring hydric soils would not be disturbed or modified in any way that would alter their hydrological properties.

3. Right-of-way clearing within forested wetlands would be accomplished by hand where possible and would be restricted to the minimal width necessary to allow for construction and operation of the proposed line.

4. If heavy equipment is required to accomplish right-of-way clearing within forested wetlands, lay-down pads would be used to remove vegetation and string transmission line cable.

5. Sediment control fencing would be placed downslope from construction activity to trap sediment and prevent its migration into waterways or water bodies.

6. Within wetland areas or along streams, stumps would not be uprooted or removed.

7. Future right-of-way maintenance within identified wetlands would be conducted during traditionally dry seasons and would avoid the use of heavy equipment. Chemical maintenance would only be done using chemicals labeled by the Environmental Protection Agency for wetlands use.

Dated: July 21, 1992.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 92-17853 Filed 7-28-92; 8:45 am]

BILLING CODE 8210-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets No. 48084 and 48086; Order 92-7-27]

Applications of Private Jet Expeditions, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Private Jet Expeditions, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 6, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 48084 and 48086 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: July 22, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-17871 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 92-35; Notice 1]

Koito Manufacturing Co., Ltd.; Receipt of Petition for Determination of Inconsequential Noncompliance

Koito Manufacturing Co., Ltd. (Koito), of Shimizu-Shi, Shizuoka-Ken, Japan, has determined that some of the vehicle equipment it manufactures fails to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Koito has also petitioned to be exempted from the notification and remedy requirements of the national Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of January 1990 through June 1992, Koito produced 325,364 headlamps which were installed on vehicles manufactured by Toyota, Mitsubishi, Chrysler, Subaru, Geo, Mazda, and Nissan. The headlamps failed to include the "O" mark required by FMVSS No. 108 for a point of reference when aiming the lamps.

Section S7.7.5.2(a)(2) Horizontal aim states that "(a)n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Sections S7.7.5.2(a)(1) Vertical aim and (a)(2) reference the necessity to provide "an equal number of graduations from the 'O' position representing angular changes in the axis." The subject headlamps do not bear the "O" mark.

Koito supports its petition for inconsequential noncompliance with the following:

(1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.

(2) The vehicle operator's manual fully explains the method of aiming the method of aiming the headlamp. It should be noted that the user does not require reference to the "O" mark to follow the maker's instructions correctly.

(3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.

This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito's VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the

users and dealers are well accustomed to this system.

(4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which had been deliberately misaligned. All ten were successful in making the required corrections in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified (to be in) compliance (with) all the requirements, including (the) VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

Interested persons are invited to submit written data, views, and arguments on the petition of Koito, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 28, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 23, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-17899 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 29, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Cigarette Lighters.

The Commission will consider a proposed consumer product safety standard that would require disposable and novelty lighters to meet specified requirements for child-resistance.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 22, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–18051 Filed 7–27–92; 2:30 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 31561.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 8:00 a.m., August 19, 1992.

CHANGES IN THE MEETING: Date of the meeting is August 10, 1992.

CONTRACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301–295–3886.

Dated: July 27, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18072 Filed 7–27–92; 3:12 pm]

BILLING CODE 3810–01–M

federal register

Wednesday
July 29, 1992

Part II

Federal Election Commission

11 CFR Parts 109, 110, and 114

Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 109, 110 and 114

[Notice 1992-11]

Independent Expenditures; Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is considering several revisions to parts 109, 110 and 114 of its regulations governing communications by corporations and labor organizations, including new provisions regarding independent expenditures by certain nonprofit corporations. These proposals would implement the Supreme Court's opinion in *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"), and several subsequent judicial decisions. This notice also addresses issues raised by the National Right to Work Committee ("NRWC") in a Petition for Rulemaking filed with the Commission on February 24, 1987 in response to the *MCFL* opinion.

Please note that the draft rules that follow do not represent a final decision by the Commission regarding the NRWC petition or the *MCFL* decision. In several areas the Commission is considering different alternatives, which appear consecutively in the draft rules as A–1, A–2, B–1, B–2, etc., but which are not discussed in that order in the supplementary information which follows. Accordingly, a second public hearing has been scheduled to obtain further comment on the issues and proposed rules discussed in this notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before September 18, 1992. The Commission will hold a hearing at 10 a.m. on October 14 and 15, 1992. Persons wishing to testify at the hearing must so indicate in their written comments.

ADDRESSES: Comments should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor hearing room, 999 E Street NW., Washington, DC. Annotated and reorganized copies of this document, which may assist commenters in following the placement of the alternatives included in the proposed rules, are available for inspection and copying through the Commission's Public Disclosure Division, 999 E Street NW., Washington, DC 20463. In addition, copies of Agenda Document #92–86–A, which contains hypothetical advertisements to promote discussion by commenters on the concept of "express advocacy", are also available through the Public Disclosure Division.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or toll free (800) 424–9530. The Public Disclosure Division may be contacted at (202) 219–4140 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed revisions to 11 CFR 109.1, 110.13, and 114.1 through 114.4, 114.12 and proposed new section 114.10 in light of recent judicial interpretations of 2 U.S.C. 441b. This section of the Federal Election Campaign Act of 1971 ("the Act" or "FECA") generally prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. However, the proposed rules would recognize several exceptions, which are based on the Supreme Court's decision in the *MCFL* case. These proposals would only apply to expenditures, since *MCFL* did not limit the prohibitions on contributions.

First, the Commission is considering replacing the partisan/nonpartisan standards in current 11 CFR part 114 with new language at draft § 114.2 prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. Revised language is also being considered in 11 CFR 109.1 to provide further guidance as to what types of communications constitute express advocacy as interpreted in *Buckley* v. *Valeo*, 424 U.S. 1, 44 n. 52 (1976) ("*Buckley*"), *MCFL* and *Federal Election Commission* v. *Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 108 S. Ct. 151 (1987) ("*Furgatch*").

In addition, the attached draft rules include substantial changes to the specific provisions in §§ 114.3 and 114.4, regarding candidate debates, candidate appearances, voter guides, voting records, voter registration activities and get-out-the-vote drives. In *Buckley*, the Supreme Court made a distinction between independent expenditures and contributions. The Court observed, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley* at 47. Thus, *Buckley* could be interpreted to prohibit all contacts with candidates. However, the Commission recognizes that some limited forms of contact may be necessary to preserve the current range of permissible activity. Therefore, these proposals draw a distinction between permissible contacts with candidates which are necessary to conduct these activities, and more extensive coordination that will result in in-kind contributions.

Finally, the proposed rule at 11 CFR 114.10 would set forth criteria for determining when nonprofit corporations possess the three features essential to the Supreme Court's decision that corporations like Massachusetts Citizens for Life, Inc. may not be bound by the restrictions in section 441b on independent expenditures. The draft regulations would expressly permit qualifying corporations to use general treasury funds for independent expenditures, and would explain the reporting obligations when exempt corporations make independent expenditures.

A. Background

In the *Massachusetts Citizens for Life* decision, the Supreme Court interpreted section 441b of the FECA to mean that expenditures for communications must constitute express advocacy to be subject to the prohibition of that section. *MCFL* at 249. For the first time, the Supreme Court also distinguished between different types of corporations in considering the constitutionality of 2 U.S.C. 441b. The Supreme Court concluded that nonprofit corporations having certain essential features do not possess the characteristics which Congress legitimately perceived as having the potential to exert an undesirable influence on the electoral process. These essential features consist of: (1) Being formed for the express purpose of promoting political ideas and not engaging in business activities; (2) having no shareholders or other persons affiliated so as to have a claim on assets or earnings or other economic disincentives for disassociating; and (3) not being established by a business corporation or a labor union, and having a policy of not accepting contributions from such entities. *MCFL* at 264. Thus, the Court held that section 441b's prohibition of independent expenditures

is unconstitutional as applied to incorporated entities such as MCFL, Inc.

The *MCFL* case involved a nonprofit corporation organized to promote specific ideological beliefs. Massachusetts Citizens for Life, Inc. was financed by voluntary contributions from members of the public who shared its beliefs, and by other fundraising activities, such as bake sales and raffles. The case arose because the corporation expended general treasury monies for the production and public distribution of a special newsletter which indicated whether certain clearly identified federal candidates supported or opposed its positions on particular issues. The newsletter also urged readers to vote "pro-life."

When the case reached the Supreme Court, MCFL argued, *inter alia*, that its special newsletter did not expressly advocate the election or defeat of a clearly identified federal candidate, and that only communications containing express advocacy should be prohibited under 2 U.S.C. 441b. First, the Supreme Court stated that "an expenditure must constitute 'express advocacy' in order to be subject to the probation of § 441b." *MCFL* at 249. The Supreme Court then ruled that MCFL's publication "goes beyond issue discussion to express electoral advocacy. * * * The 'Special Edition' thus falls squarely within § 441b, for it represents express advocacy of the election of particular candidates distributed to members of the general public." *Id.* at 249–50.

Based on this portion of the decision, the National Right to Work Committee filed a Petition for Rulemaking urging the Commission to revise 11 CFR 114.3 and 114.4 to conform to the statement in the *MCFL* opinion that "express advocacy" is the appropriate standard for determining when independent communications by corporations and labor organizations are prohibited under section 411b. See Rulemaking Petition; National Right to Work Committee, Notice of Availability, 52 FR 16275 (May 4, 1987). Thus, the petition took the position that the Commission's partisan/nonpartisan standards governing corporate and labor organization communications to the entity's restricted class and the general public are unconstitutional under *MCFL*.

The Commission subsequently sought public input on whether to initiate a rulemaking to determine the extent to which *MCFL* case necessitated either changes in the part 114 rules governing independent expenditures by certain nonprofit incorporated advocacy groups possessing the three features essential to the holding in *MCFL*, or changes in the scope of the "independent expenditure" provisions at 11 CFR part 109, or the implementation of an "express advocacy" test for all corporations and labor organizations covered by 11 CFR part 114. An Advance Notice of Proposed Rulemaking, published on January 7, 1988 (53 FR 416), presented these issues. The Commission indicated in the Advance Notice that it viewed the express advocacy statement in *MCFL* as dicta, noting that the statement was unnecessary to the resolution of the case, and thus did not represent a final resolution of the issue by the Court. ANPRM, 53 FR 416. The Advance Notice also raised the following ancillary questions concerning this portion of the opinion: 1. Should the Commission revise its regulations at that time, or wait until the Court has an opportunity to clarify this area in a case where the issue is squarely presented? 2. Should the Commission revise the 441b regulations to distinguish between independent expenditures that solely involve communications and other activities where communication plays little or no part? 3. Can the nonpartisan standard in 11 CFR 114.4 be interpreted consistently with an express advocacy test, thus eliminating the need for regulatory revision? 4. To what extent and how should the Commission revise the definition of "expressly advocating" in 11 CFR 109.1(b)(2) in light of the *MCFL* and *Furgatch* opinions?

Over 17,000 comments were received in response to the Advance Notice. The vast majority of the commenters submitted virtually identical letters urging the Commission to act favorably on NRWC's rulemaking petition, and/or to confine the regulations to communications expressly advocating election or defeat of candidates, so as to avoid impinging upon the freedom of speech rights upheld by the Supreme Court. The Commission received detailed comments from several sources. A public hearing was held on November 16, 1988, at which two commenters testified as to how the Commission should implement the *MCFL* opinion. The detailed comments and testimony reflect a wide range of views as to how the Commission should proceed in response to the *MCFL* opinion. Some commenters supported adoption of an express advocacy standard and opposed the Commission's position that this statement in the opinion was dicta that need not be followed. However, these comments disagreed as to how broadly or narrowly to define express advocacy. Some believed that the concept should be narrowly limited to the phrases enumerated by the Supreme Court in *Buckley*, so as to avoid impinging upon the First Amendment rights. However, others pointed to statements in the *MCFL* and *Furgatch* opinions to support a substantially broader interpretation of express advocacy. The Commission also received suggestions concerning election-related activities by business corporations or labor unions where no communication is involved, such as providing the use of facilities to a candidate's campaign. One possibility suggested was to treat such activity as an impermissible in-kind contribution made in connection with a federal election, but not to treat it as an impermissible expenditure. Another suggestion was to adopt an express advocacy standard for contributions as well as expenditures and to treat providing corporate or union facilities as a form of express advocacy. Finally, the Commission notes that two other commenters, including one of the testifying witnesses, favored simply retaining the current statutorily-created prohibition against both contributions and expenditures in connection with federal elections, while creating an exception allowing certain incorporated nonprofit advocacy groups to make independent expenditures.

Subsequently, in *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990) ("*Austin*"), the Supreme Court provided additional guidance as to the nature of the exception it created in *MCFL* for certain nonprofit corporations through its interpretation of a Michigan statute containing prohibitions very similar to section 441b of the FECA. In other litigation, two lower courts relied upon an express advocacy standard to evaluate corporate communications under section 441b of the FECA. In *Faucher* v. *Federal Election Commission*, 743 F. Supp. 64, (D.Me. 1990) ("*Faucher*"), the court invalidated the Commission's voter guide regulations at 11 CFR 114.4(b)(5)(i). The Court concluded that the Commission's voter guide rule is not authorized by the FECA "as interpreted by the Supreme Court in [*MCFL*], to the extent that the regulation makes the permissibility of voter guides * * * hinge upon on whether such guides are 'nonpartisan' in a broad sense that includes issue advocacy rather than the narrower test of 'express advocacy'." *Id.* at 72. Similarly, in *Federal Election Commission* v. *National Organization of Women*, 713 F. Supp. 428 (D.D.C. 1989) ("NOW"), another district court applied an express advocacy test to determine whether section 441b permitted an incorporated membership organization to use general treasury funds for solicitation letters directed to the general public. The court

concluded that the letters in question did not go beyond issue discussion to express electoral advocacy. The Commission subsequently appealed both of these lower court decisions.

The Commission also issued a second notice seeking further comments on what changes to its regulations are warranted in light of the additional guidance provided by the Supreme Court's decision in *Austin*. See 55 FR 40397 (Oct. 3, 1990), comment period extended 55 FR 45809 (Oct. 31, 1990). The second notice also welcomed comments on the express advocacy questions raised by the *Faucher* and *NOW* decisions.

Eight commenters responded to the second notice, including some who reiterated their earlier positions. Most, but not all, of the commenters urged the Commission to adopt an express advocacy test for purposes of section 441b expenditures. Although one comment favored the development of definitions which precisely set out what activity will be deemed within the scope of the FECA under such a standard, another comment supported the use of a case by case approach. There was also some support for modifying the regulations to reflect the approach taken in the *Furgatch* opinion regarding what constitutes express advocacy. The Commission also received specific suggestions for delineating the class of nonprofit corporations falling within *MCFL*'s exemption. Two comments advocated a broad scope for the exemption created in *MCFL*, although a third comment emphasized the narrowness of the group of organizations possessing the three essential features delineated in *MCFL* and *Austin*.

Subsequently, the District Court's decision in *Faucher* was upheld by the Court of Appeals for the First Circuit. *Faucher* v. *Federal Election Commission*, 928 F.2d 468 (1st Cir. 1991), *cert. denied*, _____U.S._____, 112 S. Ct. 79 (1991). Consequently, the Commission sought certiorari in *Faucher*, continuing to argue that the express advocacy standard should not be made applicable to the 441b prohibition on corporate expenditures. On October 7, 1991, the Supreme Court denied the petition for certiorari, and thus declined to consider narrowing or otherwise modifying the statements made in *MCFL*. Accordingly, the Commission moved for the dismissal of its appeal in *NOW* and is resuming consideration of several substantial changes to its regulations necessitated by the *MCFL* decision.

The draft rules would codify the reduced scope of the prohibition on corporate expenditures. The proposed language would set forth the general rule that corporations and labor organizations are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate. The draft regulations would also establish criteria for determining whether nonprofit corporations qualify for the exemption from section 441b's prohibition on independent expenditures. The proposals are explained more fully below. Please note that the attached draft rules do not represent a final decision by the Commission regarding the NRWC petition or the issues presented in this rulemaking.

B. The Express Advocacy Standard

The proposed rules which follow incorporate an express advocacy standard in several sections of 11 CFR part 114. First, new language in § 114.2 would prohibit corporations and labor organizations from making expenditures for communications to the general public that expressly advocate the selection or defeat of a clearly identified candidate, group of candidates, or candidates of a clearly identified political party. However, the draft regulations would not change the current prohibition against contributions made by corporations and labor organizations in connection with federal elections. It is important to note that the new provision prohibiting expenditures for communications containing express advocacy would apply to all corporations and labor organizations except for nonprofit corporations meeting certain criteria, as explained in new § 114.10. Thus, nonprofit corporations satisfying the criteria under § 114.10 would be permitted to make expenditures for communications to the general public which contain express advocacy, including registration and voting communications, official registration and voting information, voting records and voter guides, if made independently of any candidates. If the nonprofit corporation did have contact with candidates in conducting these activities, it would be subject to the rules set forth in § 114.4 regarding the limited extent of such contact and could not include express advocacy. However, if the communication or activity did involve express advocacy, any coordination would compromise the independence of the communications and possible future communications, resulting in prohibited in-kind contributions.

The draft would preserve the distinction in the current regulations between the rules governing communications to the restricted class (set forth at 11 CFR 114.3) and the rules governing communications beyond the restricted class (as set out in 11 CFR 114.4). However, the proposals would delete the more restrictive language in current § 114.3(a)(1) prohibiting corporate and labor organization expenditures for "partisan" communications to the general public. Section 114.3 would continue to permit corporations and labor organizations to communicate with their restricted classes on any subject. The references to "partisan" activities would be replaced with narrower provisions that would only apply to communications containing express advocacy. For example, § 114.3(b) would be revised to state more explicitly that only communications expressly advocating the election or defeat of a clearly identified candidate are subject to the reporting requirements of 11 CFR 100.8(b)(4) and 104.6.

The provisions of § 114.4 regarding communications by corporations and labor organizations to persons outside the restricted class would also be substantially revised and reorganized. The nonpartisan standards found in the current regulations would be replaced by language prohibiting express advocacy in candidate appearances, debates, voter guides, voting records, and voter registration and get-out-the-vote drives. Section 114.4(c)(1) would also include language to clarify that the term "general public" includes anyone who is not in the restricted class.

Similarly, the draft which follows would delete the term "partisan" from § 114.12(b). As revised, this provision would permit corporations and labor organizations to make meeting rooms available to a particular candidate or political committee if the room is made available to any other candidate or committee upon request.

Finally, please note that a definition of "restricted class" would be added at 11 CFR 114.1(j). This definition would clarify that the terms "restricted class" and "solicitable class" may not be coextensive. For example, a trade association's restricted class consists of its members and its own executive and administrative employees and their families. In contrast, the trade association's solicitable class also includes its member corporations' stockholders and the executive and administrative personnel, if the member corporations have approved the solicitations.

C. Defining Express Advocacy

The Commission seeks comments on two alternative sets of revisions to the definition of express advocacy set out in 11 CFR 109.1(b)(2). Both Alternatives A–1 and A–2 would continue to list the specific phrases set forth in the *Buckley* opinion as examples of express advocacy. They would also indicate that "express advocacy" includes other expressions of support or opposition, as suggested by the Supreme Court in *Buckley* and *MCFL*, and as delineated by the Ninth Circuit in *Furgatch*. For example, under Alternative A–1, express advocacy would include suggestions to take actions such as to contribute or to participate in campaign activity. In contrast, Alternative A–2 would indicate that express advocacy constitutes an exhortation, and that there must be no other reasonable interpretation of the exhortation other than encouraging the candidate's election or defeat, rather than another type of action on a specific issue. Alternative A–2 would also indicate that a communication constitutes an exhortation if it is made within a specified number of days before an election, and it does not encourage any type of action on any specific issue. Comments are requested as to what an appropriate time frame should be. This time period could be as short as 14 days, or as long as six months, prior to an election, or any other time period considered reasonable.

MCFL makes clear that isolated portions of a communication are not to be read separately in determining whether a communication constituted express advocacy. Instead, the communication should be read as a whole. See 479 U.S. at 249–50. Further, the *Furgatch* opinion evaluated the contents of the communication in question "as a whole, and with limited reference to external events." *Id.* at 864. For example, external factors of significance in *Furgatch* included the existence of an upcoming presidential election and the timing of the advertisement a week before the general election. Similarly, the Commission's proposed changes in both alternatives would recognize that all statements and expressions included in the communication must be evaluated in terms of pertinent external factors such as the context and timing of the communication. In addition, both proposed definitions would clarify that communications consisting of several pieces of paper will be read together.

The two alternatives differ as to the application of the requirement that the candidates be "clearly identified." Alternative A–1 indicates that this includes candidates of a clearly identified political party and a clearly identified group of candidates, such as the "pro-life" candidates in the *MCFL* case. Alternative A–2 would not specifically mention clearly identified groups of candidates, but would include messages such as "Vote Republican" or "Vote Democratic" if made within a specified period prior to a special or general election or an open primary. Again, this time period could be as short as 14 days, or as long as 6 months, prior to an election, or any other time period considered reasonable. Alternatively, the period between the primary and general elections could be viewed as the time when such messages refer to clearly identified candidates. In contrast, under Alternative A–1, these phrases would refer to clearly identified candidates if made at any time after specific individuals have become Republican or Democratic candidates within the meaning of the FECA in the geographic area in which the communication is made. As a general matter, the Commission seeks comments on when a message such as "Vote Democratic" or "Vote Republican" refers to one or more clearly identified candidates, rather than being just a message of support for a party. Finally, Alternative A–2 would also specifically state that "with respect to an election" includes references such as "Smith '92" or "Jones is the One."

The Commission is also considering a third option for defining "express advocacy" in lieu of the two alternatives presented in the proposed rules. By revising the existing definition of "expressly advocating" in Part 109, the two alternatives set forth in the proposed rules continue the Commission's current approach of applying the same definition of "express advocacy" in all contexts under the FECA. However, the Commission could decide to draft a new definition of "express advocacy" for inclusion in Part 114 that would apply only to corporations and labor organizations governed by that Part. The purpose of drafting a separate definition would be to focus more specifically on implementing the *MCFL* Court's dictate that "express advocacy" is the standard when determining what is an expenditure under 2 U.S.C. 441b. This definition would center on whether a communication urged action with respect to a federal election rather than on whether the communication also related to a clearly identified candidate. Thus, this approach would take a different view of "express advocacy" for organizations subject to the prohibitions of section 441b.

To illustrate the difficulty involved in applying an "express advocacy" standard, the Commission has included Agenda Document #92–86–A in the rulemaking record. This document contains seven hypothetical advertisements, each of which is assumed to be published within two weeks of an election. These examples are available on request through the Commission's Public Disclosure Division and may assist commenters in analyzing the proposals contained in this Notice.

D. Specific Activities

Sections 110.13, 114.3 and 114.4 set forth proposed changes to the rules governing candidate appearances, candidate debates, voting records, voter guides, registration and voting communications, the distribution of official registration and voting information, and supporting or conducting registration and get-out-the-vote drives. The draft rules also contain new language that would set forth the Commission's current policies regarding endorsements of candidates and facilitating the making of contributions. Alternative proposals would address the use of corporate or labor organization logos, trademarks and letterhead. As noted above, the primary change in the proposed amendments is the new language indicating that corporate or labor organization expenditures for communications to those outside the restricted class may not contain express advocacy.

Another significant change would be the addition of new language in §§ 109.1, 110.13, 114.2, 114.3, and 114.4 indicating when corporate and labor organization expenses will be treated as impermissible in-kind contributions to particular candidates. Prior to the *MCFL* decision, the Commission had not needed to examine the extent to which corporate and labor organization expenditures could be treated as in-kind contributions, because such expenditures in connection with elections were prohibited, unless subject to a specific exemption. Under the proposed regulations, coordination of corporate or labor organization activities with candidates may result in prohibited in-kind contributions or may compromise the independence of future activities, although certain limited contact is specifically permitted by §§ 114.3 and 114.4. For example, an in-kind contribution would be made if discussions between a corporation's staff and candidates or their campaign staff go beyond the limited contact

reasonably necessary to carry out permissible activities such as preparing voter guides for distribution to the general public. Limited contact, in this example, would include discussions of the format, structure and timing of an appearance or voter guide, and discussions of a candidate's positions on issues relevant to the activity. Please note that, in the case of a communication just to the restricted class, exceeding the limitations on contact will not cause that activity or future communications to the restricted class to be considered in-kind contributions. However, discussions of specific campaign strategy or tactics in the context of any activity conducted under § 114.3 or § 114.4 may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures in the future. Moreover, such discussions may also cause future activities under § 114.4 to be treated as prohibited in-kind contributions by the corporation or labor organization.

Finally, § 114.4 would be restructured to follow the format of § 114.3. Section 114.4 would begin with a general explanation of the types of communications that may be made to the general public, to rank and file employees, and solely to the restricted class.

1. Candidate Appearances

The Commission seeks comments on several questions regarding corporate and labor organization funding of candidate appearances before the restricted class and other employees, and on several possible amendments to the regulations at 11 CFR 114.3(c)(2) and 114.4(b)(2).

Proposed § 114.4(b)(2) would follow the current rules at § 114.4(a)(2) by allowing rank and file employees who are not in the restricted class to attend candidate appearances organized by corporations or labor organizations. The Commission is seeking comments on several questions that have been raised concerning candidate appearances under this section. First, if rank and file employees outside the restricted class attend the candidate appearance, one question that could be resolved in these rules is whether the candidate may solicit and collect contributions during the appearance. For example, should the candidate be able to pass the hat or place donation boxes in the room? Both the present and the proposed language prohibits the corporation or labor organization from soliciting contributions during these candidate appearances. The draft rules would also incorporate the Commission's established policy that corporations and labor organizations are not permitted to facilitate the making of contributions to candidates, such as by providing envelopes addressed to the candidate. See, *e.g.*, AO 1987–29, n. 2. Thus, the question is whether a candidate should be able to use donation boxes during an appearance without this being treated as impermissible facilitation by the corporation or labor organization.

In situations where one candidate appears at a corporate or labor organization event, the attached draft of § 114.4(b)(2) would follow the current provisions by requiring corporations to let the other candidates for that office come and speak if they so request. However, comments are sought on possibly requiring a corporation to notify the other candidates in advance whenever they invite a candidate to appear. Prior notification would provide the other candidates with a real opportunity to request comparable appearances. In cases where a candidate shows up to shake hands on corporate premises, without a prior invitation, notice could be given to the other candidates as soon as feasible.

Comments are also requested on new language in § 114.4(b)(2) that would not allow the corporation or labor organization to favor one candidate through the structure or format of the candidate appearance. One example of this may be giving rank and file employees time off to listen to one candidate but not to listen to others. Another example arises where candidates receive unequal time or facilities, unless it is clearly impractical to provide all candidates with similar opportunities, such as where a candidate requests to appear after a labor organization's convention is over.

Several issues have arisen regarding § 114.3(c)(2), which governs the presence of news media at candidate appearances before only the restricted class. For example, a news organization may wish to reprint or broadcast the candidate's appearance in its entirety. Concerns have been raised that a candidate appearance before a corporation's or labor organization's restricted class would be transformed by this type of gavel to gavel coverage into a general public appearance. Accordingly, the Commission seeks comments on two alternative proposals, which have several parts located in §§ 114.3(c)(2) (i) and (iii) and 114.4(b)(2)(viii). In § 114.3(c)(2)(iii), Alternative C–1 would indicate that such coverage is permissible provided that two conditions are met. First, if the corporation or labor organization permits one media representative to cover the appearance, all *bona fide* media organizations must be given the opportunity to cover the event. This could be accomplished through pooling arrangements, if necessary. Secondly, if the corporation or labor organization permits the news media to cover an appearance by one candidate, the news media must be given the opportunity to cover all other candidates who appear. Alternative C–2, found in § 114.3(c)(2)(i) would indicate that the corporation or labor organization may not permit the media to cover such candidate appearances before just the restricted class. Instead, under Alternative C–2 at § 114.4(b)(2)(viii), in addition to the two requirements on media access, media coverage of candidate appearances is only permissible if rank and file employees may also attend, all candidates for the same seat who request to appear are given a similar opportunity, and the corporation or labor organization does not expressly advocate, or encourage the audience to expressly advocate, the election or defeat of any candidate. Both Alternatives C–1 and C–2 would also replace the current language allowing "limited invited guests" to attend candidate appearances with more specific language covering guests who are being honored or speaking or participating in the event.

It is important to note that the amendments under consideration would not change the Commission's analysis of cases in which a corporation invites the general public to attend a speech. In those cases, the Commission would continue to examine whether the individual is appearing as a candidate or in another capacity, such as an officeholder or a prominent speaker on a particular issue. See, *e.g.*, AO 1992–6.

The Commission is, however, considering a possible new exception that would permit colleges, universities, and other incorporated nonprofit educational institutions which are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups associated with the school wishing to invite candidates to address students, faculty and the general public. The proposed provisions in § 114.4(c)(7) are intended to ensure that these candidate appearances will not become campaign rallies, fundraising events, or opportunities for the school or group issuing the invitation to expressly advocate, or encourage the audience to expressly advocate, the election or defeat of the candidate who is appearing. The presence of campaign banners, posters, balloons and other

similar items would be viewed as indicative of a campaign rally.

These proposals would not permit candidates to collect contributions during the appearance, although candidates could ask for contributions to be sent to the candidate's campaign committee. Under the draft rules, educational institutions could allow the media to cover these candidate appearances and to broadcast them to the general public, provided the schools follow the guidelines set out at either Alternative C–1 in § 114.3(c)(2)(iii) or Alternative C–2 in § 114.4(b)(2)(viii). Comments are sought on these proposals. The Commission is also considering whether to adopt a similar approach for candidate appearance in churches and synagogues.

2. Candidate Debates

The changes proposed in the candidate debate regulations at 11 CFR 110.13 and 114.4(f) are generally similar to the changes described above regarding candidate appearances under § 114.4(b)(2). First, staging organizations would not be allowed to manipulate the structure and format of debates so as to favor one or more participating candidate, such as by allocating the time unequally or by giving only one candidate advance information as to the nature of the topics to be covered or the specific questions to be asked. Staging organizations would also not be permitted to expressly advocate in support of or opposition to any clearly identified candidate during the debates. However, a news organization that stages a candidate debate would be able to produce an editorial containing express advocacy under the news story exception to the definition of contribution and expenditure in 11 CFR 100.7(b)(2) and 100.8(b)(2). Finally, the proposed revisions would recognize that a limited amount of contact with candidates is necessary to conduct debates.

3. Voting Records

The attached draft of § 114.4(c)(4) would modify the voting records regulation in two respects. First, new language would prohibit voting records, and all accompanying communications to the general public, from expressly advocating the election or defeat of one or more clearly identified candidates. The proposed amendments would also disallow coordination with candidates in distributing voting records. Comments are sought as to whether to permit or prohibit corporations and labor organizations from obtaining directly from the candidates voting information and data on which votes to include.

4. Voter Guides

As discussed above, the First Circuit concluded in *Faucher* that the current provisions of § 114.4(b)(5)(i) exceed the regulatory boundaries imposed by the FECA as interpreted by the Supreme Court. 928 F.2d at 472. Consequently, the Commission is considering several changes to these rules. First, the proposed revisions, which would be located in § 114.4(c)(5), would allow corporations and labor organizations to prepare and distribute to the general public their own voter guides or to obtain voter guides prepared by nonprofit organizations that are tax-exempt under 26 U.S.C. 501 (c)(3) or (c)(4). The factors currently set forth in § 114.4(b)(5)(i) would be replaced with a more limited set of requirements intended to ensure the same amount of space is provided for each candidate's response, that the voter guide does not contain express advocacy, and that contact with candidates is limited to the preparations reasonably necessary to produce the guide, such as written communications regarding the candidate's positions on issues. The proposed revisions would also eliminate the current restrictions on the geographic area in which voter guides may be distributed, but would prohibit coordinating the distribution of voter guides with candidates.

5. Voter Registration and Get-Out-The-Vote Drives

Section 114.3(c)(4) sets forth provisions governing voter registration and get-out-the-vote drives aimed at a corporation's or labor organization's restricted class. Voter drives aimed at other employees or the general public are covered in renumbered § 114.4(d). The Commission is considering revising both of these provisions in several respects. First, the draft language which follows would distinguish between the speech and nonspeech components of voter drives. Thus, the proposals would conform to the *MCFL* decision by applying an express advocacy standard to the speech components of voter drives. New language would be added to § 114.4(d) to indicate that communications containing express advocacy may not be made during voter drives aimed at employees outside the restricted class, or during voter drives aimed more broadly at the general public. In contrast, § 114.3(c)(4) would be revised to state explicitly that express advocacy is permissible in voter drive communications aimed solely at a corporation's or labor organization's restricted class. Thus, the proposed revisions to § 114.3(c)(4) would also retain the current language specifically permitting voter drive communications to urge the restricted class to vote for particular candidates and to register with a particular party.

The draft rules would also include changes regarding the nonspeech components of voter drives. Section 114.4(d) would be changed to permit corporations and labor organizations to conduct voter registration and get-out-the-vote drives without the involvement of a nonprofit organization which is tax exempt under 26 U.S.C. 501(c)(3) or (c)(4). Such drives could not be targeted primarily at those who are or were registered with only one political party, such as only Republicans or only Democrats. In addition, workers could not be paid only to register voters supporting a particular candidate or political party. Finally, the proposed rules in §§ 114.3 and 114.4 would continue the current policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties. The Commission seeks comments on these proposals.

6. Endorsements

The Commission is proposing adding new § 114.4(c)(6) to provide a statement as to its current policy regarding public endorsements of candidates by corporations and labor organizations. This language would continue the approach taken in AO 1984–23, where the Commission permitted a corporation to include an endorsement in a publication directed to its restricted class. In addition, the new rule would allow the endorsement to be made during the candidate's appearance before the restricted class. The Commission is considering two alternative approaches regarding further corporate or labor efforts to publicize the endorsement. Under Alternative D–1, the corporation or labor organization may spend a *de minimis* amount to issue a press release regarding the endorsement to its usual media contacts. This language would also explicitly recognize that the press release may be accompanied by a routine press conference. In contrast, Alternative D–2 would permit the corporation or labor organization to publicize the endorsement only by responding to questions posed during a routine press conference. Finally, the proposed rules would permit corporations and labor organizations to have contact with candidates to the limited extent necessary to make the endorsement, without treating these communications

as impermissible in-kind contributions. The Commission seeks comment, however, on whether this limitation on candidate contact would inhibit the corporation's or labor organization's ability to obtain the information needed to make an endorsement decision. If so, how can the rules be structured to avoid the coordination problems raised by these communications?

7. Facilitating the Making of Contributions

As part of the extensive revisions to 11 CFR 114.3 and 114.4, the Commission is proposing adding new language to these sections to set forth the current policies regarding facilitating the making of contributions. In AOs 1987–29, 1986–4 and 1982–2, and in the 1977 Explanation and Justification of § 114.3, the Commission has stated that corporations and labor organizations may not facilitate the making of contributions to particular candidates or political committees other than their own separate segregated funds. *Explanation and Justification of Regulations*, H. Doc. No. 95–44, 95th Cong., 1st Sess. at 104–105. Draft § 114.3(d) would list examples of activities which constitute facilitation, such as providing envelopes addressed to the committee.

The proposed rules would follow the current policy that facilitation does not include situations where an individual's contribution to the separate segregated fund is earmarked for a specific candidate. In such cases, the contribution will be counted against the individual's limitations on contributions to both the separate segregated fund and to the candidate. If the separate segregated fund exercises direction or control over the contribution, the contribution will also count against the separate segregated fund's contribution limits. See 11 CFR 110.6. Moreover, if the corporation or labor organization uses treasury funds to seek earmarked contributions from its restricted class to specific candidates through its separate segregated fund, such contributions will be attributable to the limits of the separate segregated fund and the individual contributors.

8. Use of Logos, Trademarks and Letterhead

This rulemaking provides an opportunity to address the use of corporate or labor organization logos, trademarks and letterhead. The Commission has encountered situations in which executives of corporations or labor organizations use official corporate or labor organization stationery, whether or not reproduced at the executive's personal expense, to solicit funds or support for a candidate. *E.g.*, MURs 3066, 1690 and 1261. The use of such stationary in these instances is something of value and may assist the candidate in garnering support or soliciting funds, and thus constitutes a prohibited corporate or labor organization contribution. The question presented is whether such a logo, trademark or letterhead may be used if the corporation or labor organization is reimbursed for the intangible value of the item(s), or whether their use (except through ordinary commercial transactions in the usual course of business) should be prohibited.

Comments are sought on two alternative approaches, which are set out in different sections of the regulations. The first option, which is set out as Alternative B–1 in the definitions § 114.1(a)(1), is to treat logos, trademarks and letterhead as something of value and a contribution or expenditure if provided without charge or at less than the fair market value. That approach would allow individuals and candidates to reimburse corporations and labor organizations for the cost of the stationery plus the value of using the corporate or union symbol, name, etc. One difficulty with this approach is ascertaining the fair market value, given subjective considerations such as goodwill. Thus, the second option, which is set forth as Alternative B–2 in § 114.4(b)(1), is to simply prohibit such uses, whether or not the corporation or labor organization is reimbursed for the use, with four exceptions for: Corporations qualifying for the *MCFL* exception; communications to the restricted class, as described under 11 CFR 114.3; communications beyond the restricted class, as permitted under 11 CFR 114.4; and solicitations made in accordance with 11 CFR 114.5 through 114.8.

The proposed language of both alternatives would also apply to situations in which an individual makes a communication either by using personal stationery or by appearing in a campaign ad, where the letter or advertisement indicates that the individual is acting on behalf of the corporation or labor organization, including references to the individual's official title at that organization. However, this proposal would enable an individual to include a general identification such as "auto maker," whereas "Vice President of XYZ Automobile Corporation" would be precluded. These proposals would supersede AOs 1984–43 and 1978–77 in this respect. Please note that these communications would not fall within the narrow scope of permissible corporate and labor organization endorsements discussed above. The Commission welcomes comments on whether there are any conditions under which a corporate or labor official could include references to his or her official title in a communication without creating the appearance that he or she is acting in an official, rather than individual volunteer, capacity.

E. Coordination with Candidates

As noted above, the *MCFL* decision addressed the scope of the FECA's prohibition against corporate expenditures. However, the prohibition against corporate contributions was expressly reaffirmed in *MCFL*. 479 U.S. at 260. Accordingly, the proposed rules which follow would preserve the statutory ban on contributions made by corporations and labor organizations in connection with federal elections. This includes in-kind contributions resulting from the coordination of election-related corporate or union communications with candidates, although the limited types of activities described in 11 CFR 114.3 and 114.4 may involve contact with candidates. Thus, the proposed rules would distinguish between the limited contact with candidates that is necessary to produce voter guides, or to make endorsements or to hold candidate appearances, and the more extensive discussions resulting in arrangement, coordination or direction of these and other activities by the candidate or the campaign staff. In addition, 11 CFR 109.1(b)(4) would be amended to reflect this distinction. Please note that the draft rules generally do not distinguish between verbal and written communications. Nevertheless, comments are requested as to whether the proposed voter guide provision should restrict permissible contact to written communications with candidates which are "limited to the preparations reasonably necessary to produce the voter guide." Please note that draft language in new § 114.2(c) would indicate that the limited types of election-related contact with a candidate, which are described in §§ 114.3 and 114.4, will not cause those activities to be treated as prohibited in-kind contributions or expenditures. In addition, contact beyond these limits, for the purpose of making communications just to the restricted class, will not cause that activity or future communications to the restricted class to be considered in-kind contributions. Nevertheless, any contacts may be used as evidence of

impermissible coordination that would negate the independence of other activities directed to the general public which are conducted by the corporation, labor organization, or separate segregated fund.

F. Exempt Corporations

1. Introduction

In *MCFL*, the Supreme Court recognized an exception to the prohibition on independent expenditures by corporations and labor organizations contained in 2 U.S.C. 441b. Noting that "MCFL was formed to disseminate political ideas, not to amass capital," the Court said that "MCFL is not the type of 'traditional corporatio[n] organized for economic gain' that has been the focus of regulation of corporate political activity." 479 U.S. at 259.

The Court's decision is based on its conclusion that "[v]oluntary political associations do not suddenly present the specter of corruption merely by assuming the corporate form * * *. Some corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status." *Id.* at 263. The Court went on to list the "three essential features" of these corporations that are "more akin to voluntary political associations," and therefore, like MCFL, are not subject to the prohibitions on independent expenditures contained in 2 U.S.C. 441b.

The Commission proposes to add new section 114.10 to implement the portions of the *MCFL* decision that create an exception from section 441b for these "MCFL-type" organizations. The Commission is seeking comment on two versions of this section that take different approaches to defining the MCFL exception. Generally, version 1 uses the language of the MCFL and *Austin* decisions to describe an MCFL corporation. Version 2 takes a broader tax law approach.

Since the two versions take different approaches, they are set out separately in the proposed rules. However, the two versions would have several paragraphs in common. Specifically, paragraphs (b), (d), (e)(1), (f), (g) and (h) would be the same in both versions. Therefore, rather than reprint the common paragraphs in version 2 of the proposed rules, we have inserted in their place cross references to the corresponding paragraphs in version 1. Commenters should refer to the narrative discussion of version 1 for a more detailed explanation of these common paragraphs.

The two versions use different terms to describe those organizations that qualify for the MCFL exception. Version 1 uses the term "exempt corporation." Version 2 uses the term "qualified corporation." By proposing these two alternatives, the Commission hopes to elicit comments on which term would be preferable. Commenters are encouraged to express their views on these two alternatives, and to submit suggestions of other terms that might be used to describe these corporations. Since version 1 uses the term "exempt corporation" to describe MCFL organizations, the narrative portion of this notice will use that term in most instances. However, commenters should regard the term "exempt corporation" as synonymous with the term "qualified corporation."

In accordance with the *MCFL* decision, an "exempt corporation" would be allowed to use treasury money to make independent expenditures without violating 2 U.S.C. 441b. However, exempt corporations would still be subject to the existing prohibition on contributions, including in-kind contributions, contained in section 441b and the regulations. See proposed 11 CFR 114.2. They would also be subject to certain limitations when they make independent expenditures.

In *MCFL*, the Supreme Court addressed the concern that "persons may desire that an organization use their contributions to further a certain cause, but may not want the organization to use their money to urge support for or opposition to political candidates solely on the basis of that cause." 479 U.S. at 261. The Court suggested that this concern could be met by "requiring that contributors be informed that their money may be used for such a purpose." *Id.* The Commission regards this as important "to ensure[ ] political resources reflect political support." *Id.* at 264. Therefore, paragraph (f) of proposed § 114.10 would require an exempt corporation that solicits donations to inform potential donors of the possibility that their donations might be used for election influencing purposes.

Exempt corporations would also be required to comply with certain reporting requirements. Those making independent expenditures aggregating in excess of $250 in a calendar year would be required to file reports under 11 CFR 109.2. In addition, they would be required to file a qualifying statement showing that they qualify for exempt status. These reporting requirements are discussed further below.

Finally, when an exempt corporation's major purpose is making independent expenditures, that corporation becomes a political committee that is subject to the registration and reporting requirements of 11 CFR parts 102 and 104. The proposed rules define the circumstances under which an exempt corporation's major purpose will be considered to be making independent expenditures.

2. Version 1

a. Exempt Corporation Status

In *MCFL*, the Supreme Court said that "*MCFL* has three features essential to our holding that it may not constitutionally be bound by section 441b's restriction on independent expenditures." 479 U.S. at 263–64. Paragraph (c) of proposed § 114.10 breaks these features down into separate paragraphs. Corporations with all these features will qualify for an exemption from section 441b.

Under the first feature, an exempt corporation is one that was formed for the express purposes of promoting political ideas and cannot engage in business activities. 479 U.S. at 264. The proposed rules break this first feature down into two elements which are addressed in separate paragraphs in the interest of clarity.

The first aspect of this feature is set forth in proposed paragraphs (b)(1), (b)(2) and (c)(1). A corporation must have only one express purpose, the promotion of political ideas, in order to satisfy the first element. A corporation "whose bylaws set forth more varied purposes * * * which are not inherently political *. * *" would not qualify for an exemption. *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652, 662 (1990). To clarify the phrase "promotion of political ideas," paragraph (b)(1) indicates that this term includes both issue advocacy and election influencing activity. The term "political purposes," which is used later in the proposed rules, also includes both kinds of activity.

Several comments received by the Commission in response to the Advance Notice of Proposed Rulemaking suggested a flexible approach to this portion of the first feature. They argue that statements in the corporation's organic documents should not be read too literally, nor should they be the exclusive criteria for exempt status. The proposed rule does allow for flexibility in the corporation's organic documents. For example, the corporation could include boilerplate language such as "any lawful purpose" in its articles of

incorporation or bylaws and still qualify as an exempt corporation. In addition, tax-exempt organizations that operate "exclusively for the promotion of social welfare" under 26 U.S.C. 501(c)(4) would satisfy this portion of the first feature. The Commission regards this purpose as consistent with the proposed rule.

The proposed rule also accounts for other matters in determining express purpose. The Commission would regard statements made by the corporation through its agents, and the corporation's actual activities, as evidence of the corporation's purpose. Paragraph (b)(2)(iii) is included to indicate that the Commission may look beyond statements made in a corporation's articles of incorporation to determine its express purpose. If the corporation's actual activities are inconsistent with the exemption, it will lose its exempt status. This approach is consistent with *Austin*, which involved a corporation that complied and disseminated various kinds of information, provided publications and educational services to its members, many of which are nonpolitical, and promoted ethical business practices. The Supreme Court said "[the corporation's] nonpolitical activities suffice to distinguish it from MCFL in the context of this characteristic." 494 U.S. at 663.

Many of the commenters also suggested that a corporation's tax exempt status under 26 U.S.C. 501(c)(4) should support a presumption that it satisfies the first feature. The Commission agrees that section 501(c)(4) status is relevant to the question of whether a corporation qualifies for an exemption. Consequently, it is included in paragraph (c)(5) of the proposed rule, discussed further below. However, the *Austin* decision indicates that, with regard to the first feature, the focus is on the activities conducted and the statements made by the corporation. Therefore, the proposed rule focuses on those matters in relation to the first feature, and considers tax exempt status separately.

The second element of the first feature is set forth in proposed paragraph (c)(2). In *MCFL*, the Supreme Court said that exempt corporations "cannot engage in business activities." 479 U.S. at 264. Thus, under proposed paragraph (c)(2), only those corporations that cannot engage in business activities would be entitled to an exemption. The use of the word "cannot" in the *MCFL* opinion suggests that corporations would not satisfy the business activity prohibition solely by showing that they have not engaged in business activities in the past. Instead, only those that are unable to engage in business activity in the future would fall within the scope of the exemption.

Proposed paragraph (b)(2) contains a non-exhaustive list of activities that would be considered business activities for the purposes of this section. For example, if a corporation receives income as a result of providing goods or services to its members or to the general public, that corporation would be engaging in business activity. Under this rule, a corporation that engages in activity such as selling books or calendars through commercial retail stores would be engaging in business activity. This is to be distinguished from political fundraising activities that are expressly described to potential donors as a request for donations that will be used for political purposes. Fundraising activities so described are not business activities under the proposed rule.

For the limited purposes of 11 CFR 114.10(b)(2), the term "members" would encompass a larger class of persons than it does in 11 CFR 114.1(e), where it defines those persons considered part of a membership organization's solicitable class. In this situation, "members" includes any person who is eligible to participate in activities conducted by the organization. There would be no change in the § 114.1(e) definition of "members" for solicitation purposes. The Commission welcomes comments on this subject, and encourages suggestion of a term that might be substituted for "members" in order to make this distinction clearer.

The second feature that distinguished MCFL from other corporations was that "it ha[d] no shareholders or other persons affiliated so as to have a claim on its assets or earnings." 479 U.S. at 264. Consequently, the proposed rules would exclude corporations that have shareholders or other affiliated persons with a financial interest in the corporation. This "no shareholders" requirement is designed to "ensure[ ] that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Id.* Under proposed paragraph (c)(3)(i), no persons associated with an exempt corporation would be allowed to have any ownership or other financial interest in the corporation.

However, in *Austin*, the Supreme Court recognized that persons who are not shareholders may also face disincentives to disassociate with the corporation. "Although the Chamber also lacks shareholders, many of its members may be similarly reluctant to withdraw as members even if they disagree with the Chamber's political expression, because they wish to benefit from the Chamber's nonpolitical programs * * *. The Chamber's political agenda is sufficiently distinct from its educational and outreach programs that members who disagree with the former may continue to pay dues to participate in the latter." 494 U.S. at 663.

Consequently, the proposed rules separate these two concepts by addressing "shareholders and other persons" in paragraph (c)(3)(i) and other "disincentives to disassociate" in paragraph (c)(3)(ii). Corporations would have to satisfy both paragraphs in order to be entitled to an exemption.

Paragraph (c)(3)(ii) contains a non-exhaustive list of the kinds of benefits that would disqualify the corporation if they were offered or conferred by the corporation and conditioned on continued membership. The benefits listed are the kind that led the *Austin* Court to recognize that disincentives to disassociate take various forms, many of which are less onerous than loss of a job or an ownership interest. In *Austin*, access to educational seminars, conventions, and "contacts with other members of the business community" were strong enough disincentives to negate the second feature. 494 U.S. at 662–63. The proposed rule takes the same approach. "Certainly members would be disinclined to terminate their involvement with the organization on the basis of less extreme disincentives than the loss of employment." 494 U.S. at 663.

It is important to note that corporations that do not qualify for exempt status because they condition benefits on continued membership would not be able to remedy this and qualify for an exemption by disclosing the political nature of their membership solicitations. See proposed § 114.10(f). Such a disclosure would make members aware of how the income generated by their membership is used. However, it would not eliminate the "disincentive to disassociate" created by benefits conditioned on maintaining membership.

The third feature that distinguished MCFL from other corporations was "MCFL was not established by a business corporation or labor union, and it is its policy not to accept contributions from such entities." *MCFL*, 479 U.S. at 264. Therefore, under paragraph (c)(4) of the proposed rules, no corporation established by a business corporation or labor organization, and no corporation directly or indirectly accepting donations of anything of value from a business corporation or labor

organization, would be eligible for an exemption.

In order to ensure that corporations have this feature, the proposed rules would require corporations to have a written policy against accepting donations from business corporations and labor organizations. "This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Id.* The proposed rules also seek to deter less apparent conduit activity, by excluding corporations that might be receiving business or labor donations or support indirectly through a third organization.

Many of the comments submitted in response to the previous notices suggested that the Commission adopt a rule that would allow an exempt corporation to accept a *de minimus* amount of corporate contributions without losing its exemption. The commenters suggested that the Commission require exempt corporations to segregate these contributions in a separate account in order to avoid the Court's concerns.

In both *MCFL* and *Austin* the Court placed great importance on the need to prevent the use of exempt corporations as conduits for prohibited contributions. The *MCFL* Court said that one of the reasons MCFL's independent spending could not be restricted was because "it [was MCFL's] policy not to accept contributions from [business corporations or labor unions]." 479 U.S. at 264. The Court viewed MCFL's independence, and its policy against accepting business or labor organization contributions, as significant barriers to the dangers of conduit activity. Since an unqualified policy is the best way of ensuring that exempt corporations are not used as conduits for corporate or labor organization contributions, the proposed rule does not contain a *de minimus* exception or a separate account requirement.

However, the Commission recognizes that some organizations that do not qualify for an exemption may wish to reconstitute themselves so that they qualify for exempt status. The Commission is considering creating a mechanism whereby a previously nonexempt corporation could qualify for an exemption if it adopted all of the essential characteristics of an exempt corporation. In particular, the nonexempt corporation would be required to purge its accounts of corporate and labor organization donations and implement a policy to ensure that it does not accept these donations in the future. Once it adopts the essential characteristics, purges its accounts, and implements such a policy, the corporation would qualify for exempt status after the expiration of a minimum time period. The Commission is interested in comments on such a mechanism, and on the amount of time that should expire before the corporation qualifies for the exemption.

The Commission also recognizes that, in some situations, a corporation that does not qualify for the exemption may wish to set up a separate corporation that does qualify in order to engage in election influencing activity. One example of this would be an organization that is tax-exempt under 26 U.S.C. 501(c)(3) ("(c)(3)") that establishes a related organization that is tax-exempt under section 501(c)(4) ("(c)(4)"). Since the (c)(3) organization can accept donations from business corporations and labor organizations, and may share certain operating expenses with the (c)(4), this arrangement raises an issue as to whether the (c)(4) should be exempt from section 441b.

If the (c)(3) pays more than its share of the total operating expenses, the (c)(3) is, in effect, subsidizing the operation of the (c)(4), and may be doing so with business corporation and labor organization donations. If the (c)(4) were an exempt corporation, these impermissible donations would be facilitating the making of independent expenditures, a result that the *MCFL* Court was clearly trying to avoid.

The Commission has drafted two alternatives to proposed § 114.10(c)(4) in order to elicit commenters' views on this issue. Alternative E–1 would limit section 441b exempt status to corporations that have "no organizational relationship with any organization that accepts" donations from business corporations and labor organizations. This alternative seeks to avoid the question of whether one organization is subsidizing the other by denying both organizations exempt status under § 114.10. Under this rule, there would be no need to determine whether each organization is paying an appropriate share of the expenses.

Alternative E–2 would take a narrower approach. It would allow an exempt corporation to have an organizational relationship with a group that accepts business corporation or labor organization donations, so long as the exempt corporation does not accept donations from such an organization. Under this rule, an exempt corporation could have an organizational relationship with a 501(c)(3) tax-exempt organization.

However, if the (c)(3) organization accepts business corporation or labor organization donations, the exempt corporation could not accept donations from the (c)(3). Consequently, if the two organizations share operating expenses such as rent, office supplies, staff, or utilities, some method of accurately allocating those expenses between the two organizations would be necessary in order to ensure that business corporation and labor organization donations are not facilitating the making of independent expenditures. The Commission seeks comments on how this allocation might be accomplished, and on whether it would be preferable to avoid the need for allocation by choosing the first alternative.

Finally, proposed paragraph (c)(5) would limit the exemption to corporations that are non-profit, tax exempt, social welfare organizations described in 26 U.S.C. 501(c)(4). Corporations must fit this description in order to be exempt from the prohibition on independent expenditures. One commenter noted that application for formal recognition of exempt status under section 501(c)(4) is permissive rather than mandatory. Therefore, under the proposed rules, a 501(c)(4) organization may qualify for the section 441b exemption regardless of whether it applies to the Internal Revenue Service for formal recognition of its tax exempt status.

The Commission is considering an alternative version of paragraph (c)(5) in an effort to limit the scope of the exemption from section 441b to small grass roots organizations that operate primarily on the local level. The alternative version would limit the exemption to section 501(c)(4) organizations that are eligible to file IRS Form 990EZ. Form 990EZ is the short form of IRS Form 990, the return required of organizations that are exempt from income tax under section 501(c) of the Internal Revenue Code. Form 990EZ is available to organizations that have gross receipts during the year of less than $100,000 and total assets at the end of the year of less than $250,000. See Form 990EZ, Short Form Return of Organization Exempt From Income Tax, and accompanying instructions. The IRS created this form to minimize the reporting burdens on smaller tax-exempt organizations. This is consistent with the goal of the *MCFL* Court.

As part of this approach, the Commission would further limit the reporting requirements for exempt corporations, which are discussed in detail below. Specifically, exempt corporations would not be required to report their total disbursements. This information is used to determine

whether the corporation's major purpose is the making of independent expenditures. Instead, the Commission would require the exempt corporation to certify that its independent expenditures did not equal or exceed fifty percent its total disbursements during the time periods contained in paragraph (h). See discussion of paragraph (e)(1) below. Eliminating the need to submit figures for total disbursements would reduce the reporting requirements for exempt corporations.

The Commission is also considering limiting the section 441b exemption to groups that use the less sophisticated fundraising techniques typically employed by grass roots organizations. One criterion under consideration would deny the exemption to organizations that utilize more formalized fundraising methods such as direct mail solicitation. *MCFL* involved an organization whose resources came from garage sales, bake sales, dances, raffles and picnics. In contrast, solicitation by direct mail typically involves a greater level of sophistication and organization. Therefore, the Commission is considering limiting the section 441b exemption to organizations that use the less formalized fundraising techniques.

b. Reporting Independent Expenditures

In *MCFL*, the Supreme Court recognized the need to impose disclosure requirements to prevent "massive undisclosed political spending" by MCFL-type organizations and the use of these organizations as "conduits for undisclosed spending by business corporations and unions." 479 U.S. at 262. The Court suggested that the requirements of 2 U.S.C. 434(c) would protect against these dangers.

Section 434(c) requires persons, other than political committees, that make independent expenditures exceeding $250 in a calendar year to report certain information, such as the identity of any persons whose contributions exceed $200 in a calendar year. Section 109.2 of the regulations explains these reporting requirements in greater detail.

Paragraph (e) of proposed § 114.10 would require exempt corporations to report in accordance with § 109.2. Exempt corporations would be required to file a report when they make independent expenditures exceeding $250 in a calendar year. Additional reports would be required for each subsequent reporting period in which the exempt corporation makes independent expenditures.

Since exempt corporations would be treated as "persons" for reporting purposes, they would be expected to comply with these reporting requirements by filing FEC Form 5. The Commission is proposing to modify this form slightly so that it can be used in this situation. The revised form would require an exempt corporation to indicate its total disbursements during certain time periods. This information could be used to determine whether the exempt corporation has triggered political committee status. See discussion of § 114.10(h). Providing space for this information on Form 5 would obviate the need for an additional form or letter, thereby minimizing the reporting burdens on exempt corporations. Otherwise, FEC Form 5 would remain the same.

As indicated, the additional information requested is necessary to implement proposed paragraph (h), discussed below.

The proposed rules contain two alternative versions of paragraph (h) that use different time periods to determine whether an exempt corporation has triggered political committee status. Consequently, the proposed rules contain corresponding alternative versions of paragraph (e)(1). The first alternative, F–1, would require the corporation to report its total disbursements during the current calendar year from the beginning of the year through the close of the reporting period. The second alternative, F–2, would require the corporation to report its total disbursements during the previous calendar year.

As mentioned in the discussion of proposed paragraph (c)(5), the Commission is considering a third option for paragraph (e)(1) that is not contained in the proposed rules. Under this third alternative, the Commission would not require an exempt corporation to report its total disbursements for the time periods described in paragraph (h). Instead the Commission would require the exempt corporation to certify that the independent expenditures it made did not equal or exceed fifty percent of its total disbursements during those time periods. This would reduce the reporting requirements for exempt corporations by eliminating the need to submit figures for total disbursements. Commenters are encouraged to express their views on this third alternative.

The Commission will also need other information in order to determine whether a corporation qualifies for exempt status.

Consequently, when an exempt corporation makes independent expenditures that it is required to report under 11 CFR 109.2(a), it would also be required to submit a statement containing this information. The information is listed in § 114.10(e)(2)(ii), which closely tracks the requirements for exempt status in proposed section 114.10(c).

The statement containing this information would be referred to as the corporation's qualifying statement. The statement could be submitted either along with, or prior to, the corporation's first independent expenditure report. It is important to note that the corporation would not be required to submit a qualifying statement unless it makes independent expenditures that must be reported under 11 CFR 109.2(a). In other words, no statement would be required unless the corporation makes independent expenditures aggregating in excess of $250 in a calendar year. If the corporation stays below that level, it need not submit a qualifying statement.

The proposed rules would allow the corporation to submit the qualifying statement in letter form. However, corporations would also have the option of reporting this information using a form that the Commission is proposing to create for this purpose. If the information provided in the qualifying statement were to change, the corporation would be required to file an amendment with its next independent expenditure report. Amendments could also be in letter form, and would need to contain only the corporation's name and the corrected information.

c. Exempt Corporation as Political Committees; Major Purpose Test

In *MCFL*, the Supreme Court said that "should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." 479 U.S. at 262. Paragraph (h) of the proposed rules sets forth the circumstances under which an exempt corporation will trigger political committee status. The Commission is proposing alternative versions of this provision in order to elicit comments on the complicated issues involved. Commenters are encouraged to submit their views on both versions.

Alternative G–1 lays out a two part test for political committee status. If an exempt corporation falls within the statutory definition of political committee at 2 U.S.C. 431(4), and its major purpose is campaign activity, it will become a political committee. The corporation falls within the statutory definition of political committee if it has made more than $1000 of independent expenditures during the calendar year. The corporation's major purpose will be campaign activity if its independent

expenditures equal or exceed fifty percent of its total disbursements during either one of two time periods. The two parts of this test are described in more detail below.

The sequence of the events involved in this two part test is very important. The corporation will not become a political committee unless it falls within the definition of political committee when its major purpose becomes campaign activity. In other words, the corporation will not become a political committee unless, on the last day of the time period during which its independent expenditures exceed fifty percent of its total disbursements, it has made more than $1000 in independent expenditures since the beginning of that calendar year. These two events must occur simultaneously.

The corporation's major purpose will be campaign activity if its independent expenditures equal or exceed fifty percent of its total disbursements during either one of two time periods. The two time periods are the current calendar year from the first day of the year to the close of the current reporting period, and the sixty days prior to an election in which the corporation made independent expenditures. If the corporation's independent expenditures equal or exceed fifty percent of its total disbursements during either time period, its major purpose would be considered campaign activity.

When using the current calendar year to date time period, the Commission would look backward from the closing date of each reporting period to the beginning of the calendar year in order to determine whether fifty percent or more of the corporation's total disbursements were for independent expenditures. For example, if an exempt corporation filed a report for the third quarter, the Commission would use the time period from January 1 through September 30 in order to determine the corporation's major purpose. If independent expenditures represent fifty percent or more of the corporation's total disbursements during that period, the corporation's major purpose would be campaign activity.

Some corporations may confine their independent expenditure activity to the critical time period before the election. Therefore, the proposed rule would also use the sixty days before an election as an alternative time period for determining major purpose. If an exempt corporation's independent expenditures during the sixty days preceding an election equal fifty percent or more of its total disbursements during the same time period, the corporation's major purpose will be campaign activity. This test would only be used to determine the major purpose of exempt corporations whose independent expenditure activity significantly increase during the preelection period. Therefore, the proposed rules would not require all exempt corporations to report their total disbursements during the sixty day preelection period. If an exempt corporation's disclosure reports reveal a significant increase in campaign activity during the sixty day time period, the proposed rule would allow the Commission to request that the corporation disclose its total disbursements during the period in order to determine if the corporation has triggered political committee status.

As indicated above, an exempt corporation whose major purpose is campaign activity would become a political committee only if it falls within the statutory definition of political committee at 2 U.S.C. 431(4). Section 431(4) defines political committee as an organization that makes expenditures aggregating in excess of $1000 in a calendar year. In the case of an exempt corporation, the corporation would have to exceed the $1000 threshold on or before the close of the reporting period or the date of the election. In other words, the corporation would become a political committee only if, on the closing data of the reporting period or the date of the election, it had made more than $1000 of independent expenditures since the beginning of that calendar year.

Alternative G–2 would tie the fifty percent threshold to the calendar year. Early each year, the corporation would be required to report its total disbursement during the previous calendar year. If fifty percent or more of the corporation's total disbursements were for independent expenditures, the corporation's major purpose would be campaign activity. If it made more than $1000 of independent expenditures by the end of that year, the corporation would become a political committee.

The calendar year approach would require less reporting than alternative G–1, but may not adequately serve the purposes of the FECA. Because it determines political committee status only once a year, it would allow some exempt corporations to operate as political committees for extended periods of time without registering and reporting as such and without eliminating impermissible funds from their accounts. Commenters are encouraged to express their views on this alternative.

The Commission also welcomes comments on several other issues raised by the major purpose concept. First, should the test turn on whether independent expenditures are "a" major purpose or "the" major purpose of the corporation? Should political committee status be triggered at the fifty percent level, or at some lower level if, even at the lower level, the corporation's independent expenditure activity still constitutes the greatest percentage category of corporate activities? If the Commission were to adopt a plurality rather than majority approach, how should the amount spent on independent expenditures be compared to other corporate activities—i.e., would the Commission need to establish categories of activities that it would compare in order to determine a corporation's major purpose?

In *MCFL*, the Supreme Court acknowledged that MCFL-type organizations that become political committees "would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." 479 U.S. at 262. Consequently, the proposed rules would require an exempt corporation to eliminate all impermissible funds from its cash on hand before it becomes a political committee. Since exempt corporations cannot accept corporate or labor organization contributions, the impermissible funds that would have to be eliminated in this context would be contributions from federal contractors, foreign nationals, and in excess of the contribution limits. This requirement places exempt corporations that trigger political committee status under section 114.10 an equal footing with other political committees, which are required to dispose of impermissible funds before they cross the $1000 threshold.

3. Version 2

As noted earlier, version 2 uses the term "qualified corporation" to describe an MCFL-type organization. Version 2 takes a broader, tax law approach to defining these corporations. This version seeks comments on simply defining an MCFL corporation as one that is organized under 501(c)(4) of the Internal Revenue Code, subject to certain specifically enumerated exceptions.

In order to qualify as a tax exempt organization under section 501(c)(4), a corporation must engage in "social welfare" activity conferring benefits on a charitable class or the community at large. An organization whose activities primarily benefit its own membership is not eligible for (c)(4) status.

Version 2 describes MCFL-type organizations as "qualified corporations," and focuses on two

points. First, a qualified corporation is generally one that is organized under section 501(c)(4). Second, such an organization will not be a qualified corporation if it has any of the features listed in proposed section (c)(2) (i) through (vi). These features track the rationale of the *MCFL* and *Austin* opinions. Two additional disqualifying features would be the existence of a separate segregated fund, and ineligibility to file IRS Form 990EZ.

Version 2 would also require a simpler version of the qualifying statement than would be required under paragraph (e)(2) of version 1. As indicated in the proposed rules, paragraphs (b), (d), (e)(1), (f), (g), and (h) would be the same in version 2 as they are in version 1.

The Commission welcomes comments on the proposed revisions to parts 109, 110 and 114 and the issues raised in this Notice.

List of Subjects

11 CFR Part 109

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that, as anticipated by the Supreme Court, in *MCFL*, there may not be a substantial number of small entities affected by the proposed rules. In addition, the only new requirement is the completion of the proposed Qualifying Statement, which would not have a significant economic impact on the small entities affected.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

1. The authority citation for part 109 would continue to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

2. 11 CFR part 109 would be amended by revising paragraphs (b)(1) and (b)(2) and by republishing the introductory text of paragraph (b)(4) adding paragraph (b)(4)(iii) to section 109.1 to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(b) For purposes of this definition—

(1) *Person* means an individual, partnership, committee, association, exempt corporation under 11 CFR 114.10(c), or any organization or group of persons, including a separate segregated fund established by a labor organization, corporation, or national bank (see part 114) but does not mean a labor organization, nonexempt corporation under 11 CFR 114.10(c), or national bank.

Alternative A–1

(2) (i) *Expressly advocating* means any communication that, when taken as a whole, includes an expression of support for or opposition to a clearly identified candidate, a clearly identified group of candidates, or to the candidates of a clearly identified political party, with respect to an election.

(ii) *Support for or opposition to* includes, but is not limited to, expressions such as *vote for, elect, support, cast your ballot for,* and *Smith for Congress,* or *vote against, defeat,* or *reject,* and suggestions to take action to affect the result of an election such as to make contributions or to participate in campaign activity.

(iii) *Taken as a whole* means that all statements, expressions and messages contained in the communication, whether in the same or separate documents, are read together in light of the circumstances under which they were made and with limited reference to external events.

Alternative A–2

(2) *Expressly advocating* means any communication, or portion thereof, which constitutes an exhortation to support or oppose a clearly identified candidate with respect to an election.

(i) An *exhortation to support or oppose*—

(A) Includes phrases such as *vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat* or *reject.*

(B) Also includes any other message which contains a reference to a clearly identified candidate, if the message taken as a whole with limited reference to external events is susceptible to no other reasonable interpretation than as encouraging the candidate's election or defeat rather than some other course of action on a specific issue. *Taken as a whole* means that all statements, expressions and messages contained in the communication, whether in the same or separate documents, are read together in light of the circumstances under which they were made and with limited reference to external events.

(C) If a communication is made within _____ days preceding an election, and it contains a reference to a clearly identified candidate, and it does not encourage any action on any specific issue, the communication will constitute an exhortation to support or oppose that clearly identified candidate.

(ii) *Clearly identified candidate* means the candidate's name, nickname, photograph, drawing, or other unambiguous reference to his or her identity such as "the President", "your Congressman", or "the incumbent", or to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of George." The phrases "Vote Republican" or "Vote Democratic" refer to clearly identified candidates if made within _____ days preceding a special or general election or an open primary election.

(iii) *With respect to an election* includes any express, implied or understood reference to an upcoming election, such as "SMITH '92" or "JONES IS THE ONE".

[end of Alternatives A–1 and A–2]

* * * * *

(4) *Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate* means—

* * * * *

(iii) But may include limited contacts with candidates, candidates' agents and authorized committees of candidates regarding candidate appearances, candidate debates, voter guides, endorsements and publications, as described in 11 CFR 110.13(b)(4), 114.2(c), 114.3 and 114.4.

* * * * *

PART 110–CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

4. 11 CFR Part 110 would be amended by revising section 110.13 to read as follows:

§ 110.13 Candidate debates.

(a) *Staging organizations.* (1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and which does not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

(2) Broadcasters, *bona fide* newspapers, magazines, and other periodical publications may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

b. *Debate structure.*—The structure of debates staged in accordance with 11 CFR 110.13 and 114.4(f) is left to the discretion of the staging organization, provided that:

(1) Such debates include at least two candidates;

(2) No candidate is favored through the structure or format of the candidate debate, such as my designing the debate to provide one or more candidates with more time than other participating candidates, or by providing one candidate with more advance information regarding the topics to be addressed or the specific questions to be asked;

(3) No communication made by the staging organization during the debate expressly advocates the election or defeat of any clearly identified candidate, clearly identified group of candidates, or candidates of any clearly identified political party. Communications made at other times by staging organizations that are broadcasters, *bona fide* newspapers, magazines and periodical publications shall be governed by 11 CFR 100.7(b) (2) and 100.8(b)(2).

(4) Contact with the candidate, the candidate's agents and the candidate's authorized committee(s) shall be limited to communications reasonably necessary to staging the debate, such as discussions of the structure, format and timing of the debate, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to staging the debate.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8) (B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

6. 11 CFR Part 114 would be amended in § 114.1 by adding new text at the end of paragraph (a)(1), by revising paragraph (a)(2)(ii) and by adding paragraph (j) to section 114.1 as follows:

§ 114.1 Definitions.

Alternative B–1 (See § 114.4 (c)(1) for Alternative B–2)

(a) (1) * * * The term *anything of value* includes:

(i) The use of a corporate or labor organization logo, trademark, or letterhead without charge or at less than the fair market value; or

(ii) The inclusion of information, including but not limited to an official title, in a communication indicating that the individual making the communication is acting in his or her capacity as a representative of a corporation or labor organization.

This shall not prevent an exempt corporation under 11 CFR 114.10(c) from using its logo, registered trademark, or letterhead in communications to the general public, and shall not prevent a corporation, labor organization or separate segregated fund from using the corporation's or labor organization's logo, trademark, or letterhead in communications, including solicitations, made in accordance with 11 CFR 114.3 through 114.8.

[end of Alternative B–1]

(2) * * *

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

* * * * *

(j) *Restricted class.* A corporation's restricted class is its stockholders and executive or administrative personnel, and their families. A labor organization's restricted class is its members and executive or administrative personnel, and their families. The restricted class of an incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock is its members and executive or administrative personnel, and their families. [The solicitable class of a corporation, labor organization, membership organization, cooperative, corporation without capital stock or trade association, as described in 11 CFR 114.5(g), 114.7 and 114.8, may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class.]

7. 11 CFR part 114 would be amended by revising section 114.2 to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate, a clearly identified group of candidates, or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election. Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate, a clearly identified group of candidates, or the candidates of a clearly identified political party, with respect to a Federal election.

(c) Corporations and labor organizations are prohibited from coordinating the election-related activities described in 11 CFR Part 114 with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee, except to the limited extent specifically permitted under 11 CFR 114.3 and 114.4. The limited contact permitted under 11 CFR 114.3 and 114.4 shall not cause a corporation's or labor organization's disbursements for the activities described in those sections to become contributions or expenditures. Moreover, contacts beyond those permitted under 11 CFR 114.3 shall not

cause future activities conducted under that section to be considered contributions or expenditures. However, any communications may be considered evidence that could negate the independence of other activities conducted by the corporation, labor organization or its separate segregated fund. See 11 CFR 109.1 regarding independent expenditures and coordination with candidates.

(d) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(e) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

8. 11 CFR part 114 would be amended by revising § 114.3 to read as follows:

§ 114.3 Disbursements for communications to the restricted class in connection with a Federal election.

(a) *General.* (1) Corporations and labor organizations may make communications on any subject, including communications containing express advocacy, to their restricted class or any part of that class. Corporations and labor organizations may also make the communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. The activities permitted under this section may involve election-related contact with candidates and political committees only to the extent permitted by this section. See 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates.

(2) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock may make communications to their restricted class, or any part of that class as permitted in paragraphs (a)(1) and (c) of this section.

(b) *Reporting communications containing express advocacy.* Disbursements for communications expressly advocating the election or defeat of a clearly identified candidate made by a corporation, including a corporation described in paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in accordance with 11 CFR 100.8(b)(4) and 104.6.

(c) *Means of making communications containing express advocacy.* The means of making communications containing express advocacy for which disbursements must be reported under paragraph (b) of this section include, but are not limited to, the examples set forth in paragraphs (c)(1) through (4) below.

(1) *Publications.* Printed material expressly advocating the election or defeat of a clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party may be distributed by a corporation or by a labor organization to its restricted class, provided that:

(i) The material is produced at the expense of the corporation or labor organization;

(ii) The material constitutes a communication of the views of the corporation or the labor organization, and is not the republication or reproduction in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents. A corporation or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views; and

(iii) Except as provided in 11 CFR 114.2(c), contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to produce the publication, such as discussions of the candidate's speeches and campaign materials and the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to produce the publication.

(2) *Candidate and party appearances.*

Alternative C–1 (Continued at § 114.3(c)(2)(iii) and § 114.4(b)(1)(viii))

(i) A corporation may allow a candidate or party representative to address its restricted class at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization. A corporation or labor organization may allow employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, other guests of the corporation who are being honored or speaking or participating in the event, and representatives of the news media to be present during a candidate or party representative appearance under this section.

Alternative C–2 (Continued at § 114.4(b)(1)(viii))

(i) A corporation may allow a candidate or party representative to address its restricted class at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization. A corporation or labor organization may allow employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, and other guests of the corporation who are being honored or speaking or participating in the event to be present during a candidate or party representative appearance under this section. However, the corporation or labor organization may not allow representatives of the news media to be present during a candidate or party representative appearance unless the appearance meets the conditions set forth at 11 CFR 114.4(b)(1).

[end of Alternative language]

(ii) The candidate or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the corportion's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR 114.5(g).

Alternative C–1 (See § 114.4(b)(1)(viii) for continuation of Alternatives C–1 and C–2)

(iii) If the corporation or labor organization permits more than one candidate to address its restricted class, and permits the news media to cover or carry an appearance by one candidate, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s). If the corporation or labor organization permits a representative of the news media to cover or carry a candidate appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that candidate appearance. The corporation or labor organization may require the news media to use a pooling arrangement to provide all representatives of the news

media with equal access for covering or carrying candidate appearances.

[end of Alternative language]

(iv) Except as provided in 11 CFR 114.2(c), contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance.

(3) *Phone banks.* A corporation or a labor organization may establish and operate phone banks to communicate with its restricted class, urging them to register and/or vote for a particular candidate or candidates, or to register with a particular political party.

(4) *Registration and get-out-the-vote drives.* A corporation or a labor organization may conduct registration and get-out-the-vote drives aimed at its restricted class. Registration and get-out-the-vote drives include providing transportation to the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates. Information regarding and assistance in registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates, or a particular political party.

(d) *Facilitating the making of contributions.* Corporations and labor organizations are prohibited from facilitating the making of contributions to candidates or political committees, other than the separate segregated funds of the corporations and labor organizations. Examples of facilitating the making of contributions include—

(1) Providing materials used to transmit or deliver contributions, such as stamps, envelopes addressed to the candidate or political committee, or other similar items which would assist in transmitting or delivering contributions;

(2) Collecting contributions to a candidate or political party in conjunction with an appearance by the candidate or party representative; and

(3) Enrolling members of a corporation's or labor organization's restricted class in a payroll deduction plan, check-off system, or other plan which deducts contributions from dividend or payroll checks, other than a plan used to make contributions to the corporation's or labor organization's separate segregated fund or an employee participation plan pursuant to 11 CFR 114.11. See 11 CFR 110.6 regarding contributor earmarking of contributions made through a separate segregated fund to a candidate.

9. 11 CFR Part 114 would be amended by revising § 114.4 to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

(a) *General.* Any communications which a corporation or labor organization may make to the general public under paragraph (c) of this section may also be made to the corporation's or labor organization's restricted class and to other employees and their families. Communications which a corporation or labor organization may make to its restricted class and to other employees, but not to the general public are found in paragraph (b) of this section. Communications which a corporation or labor organization may make only to its restricted class are found at 11 CFR 114.3. The activities permitted under this section may involve election-related contact with candidates and political committees only to the extent permitted by this section. See 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates. Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock will be treated as corporations for the purpose of making communications beyond the restricted class under this section.

(b) *Communications by a corporation or labor organization to its employees and its restricted class*—(1) *Candidate and party appearances on cooperate premises or at a meeting, convention or other function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other function of the corporation to address or meet its restricted class and other employees of the corporation and their families, in accordance with the conditions set forth in paragraphs (b)(1) (i) through (viii) of this section.

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or meet employees, all candidates for that office who are seeking the nomination of a major party or who are on the general election ballot in enough States to win a majority of the electoral votes and who request to appear must be given a similar opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties who had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given a similar opportunity to appear;

(iv) A corporation, its restricted class, or other employees of the corporation or its separate segregated fund shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party;

(v) A corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group or candidates or candidates of a clearly identified political party and shall not promote or encourage express advocacy by other employees;

(vi) No candidate shall be favored through the structure or format of the candidate appearance, such as by providing one or more candidates with more time or a substantially better location than other candidates who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates with similar times or locations;

(vii) Contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance; and

Alternative C–1 (Continued from § 114.3(c)(2)(i) and (iii))

(viii) A corporation may allow representatives of the news media to be present during a candidate or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iii).

Alternative C–2 (Continued from § 114.3(c)(2)(i))

(viii) If the corporation or labor organization permits more than one candidate to address its employees, and permits the news media to cover or carry an appearance by one candidate, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s). If the corporation or labor organization permits a representative of the news media to cover or carry a candidate appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that candidate appearance. The corporation or labor organization may require the news media to use a pooling arrangement to provide all representatives of the news media with equal access for covering or carrying candidate appearances.

[end of Alternatives C–1 and C–2]

(2) *Candidate and party appearances on labor organization premises or at a meeting, convention or other function.* A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet its restricted class and other employees of the labor organization, and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (iv), (vi) through (viii), and paragraphs (b)(2)(i) and (ii) of this section.

(i) No official, member, or employee of a labor organization or its separate segregated fund shall, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party.

(ii) No official, member, or employee of a labor organization or its separate segregated fund shall, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party.

(c) *Communications by a corporation or labor organization to the general public*—(1) *General.* A corporation or labor organization may make the communications described in paragraphs (c)(2) through (c)(5) of this section to the general public. Notwithstanding the provisions of paragraph (c) of this section, an exempt corporation under 11 CFR 114.10(c) may include express advocacy in any communication made to the general public under paragraphs (c)(2) through (c)(5) of this section. The general public includes anyone who is not in the restricted class. The corporation or labor organization may include its logo or otherwise identify itself as the sponsor of a communication made to the general public under paragraph (c)(2) through (c)(5) of this section.

Alternative B–2 (See § 114.1(a)(1) for Alternative B–1) (c)(1) [The first four sentences would be the same as paragraph (b)(1) above.]

However, no person, including a corporation or labor organization, shall use a corporate or labor organization logo, trademark, or letterhead in any communication to the general public which contains express advocacy or solicits contributions. No individual making a communication expressly advocating the election or defeat of any clearly identified candidate or soliciting funds for any candidate shall include information indicating that he or she is acting in his or her capacity as a representative of a corporation or labor organization, including, but not limited to, reference to the corporation's or labor organization's name or the official's title at the corporation or labor organization. This shall not prevent an exempt corporation under 11 CFR 114.10(c) from using its logo, trademark, or letterhead in communications to the general public, and shall not prevent a corporation, labor organization or separate segregated fund from using the corporation's or labor organization's logo, trademark, or letterhead in communications to the restricted class under 11 CFR 114.3 or in solicitations under 11 CFR 114.5 through 114.8.

[end of Alternative B–2]

(2) *Registration and voting communications.* A corporation or labor organization may make registration and get-out-the-vote communications to the general public, provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party. The preparation and distribution of registration and get-out-the-vote communications shall not be coordinated with any candidate, group of candidates or political party. A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.* (i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public if registration by mail is permitted by the applicable State law. A corporation or labor organization may distribute absentee ballots to the general public if permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) The corporation or labor organization shall not, in connection with any such distribution, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party and shall not encourage registration with any particular political party.

(v) The reproduction and distribution of registration or voting information and forms shall not be coordinated with any candidate, group of candidates or political party.

(4) *Voting records.* A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party. The distribution of voting records shall not

be coordinated with any candidate, group of candidates or political party.

(5) *Voter guides.* (i) A corporation or labor organization may prepare and distribute to the general public voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions, including voter guides obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and which does not support, endorse or oppose candidates or political parties, provided that—

(A) The questions are directed in writing to all of the candidates for a particular seat or office, giving the candidates equal time to respond, except that in the case of Presidential and Vice Presidential candidates the corporation or labor organization may choose to direct the questions only to those candidates seeking the nomination of a major party or to those appearing on the general election ballot in enough States to win a majority of the electoral votes;

(B) No candidate is favored through the structure or format of the voter guide, such as by designing the voter guide to provide one or more candidates with greater prominence and other participating candidates, or by devoting unequal space to the responses of each candidate;

(C) The voter guide does not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of any clearly identified political party; and

(D) Contact with each candidate, candidate's agents, and candidate's authorized committee(s) is limited to written communications reasonably necessary to produce the voter guide, such as discussions of the structure, format and timing of the voter guide, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to produce the voter guide.

(ii) The sponsoring organization may impose limitations on the number of words per response when the questions are initially sent to the candidates for their comments.

(iii) The sponsor may ask each candidate to provide biographical information such as education, employment positions, offices held, and community involvement and may impose a limitation on the number of words per submission.

(iv) The voter guide may be made available to the general public in any geographic area, but the distribution of the voter guide shall not be coordinated with any candidate, group of candidates or political party.

(6) *Endorsements.* A corporation or labor organization may endorse a candidate and may communicate the endorsement to its restricted class through the publications described in 11 CFR 114.3(c)(1) or during a candidate appearance under 11 CFR 114.3(c)(2). The corporation or labor organization may publicly announce the endorsement and state the reasons therefor, in accordance with the conditions set forth in paragraphs (c)(6)(i) and (ii) of this section.

Alternative D–1

(i) The public announcement of the endorsement shall be made through a press release or press conference. Disbursements for the press release or press conference shall be *de minimis.* The disbursements shall be considered *de minimis* if the press release and notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing press releases or holding press conferences.

Alternative D–2

(i) The public announcement of the endorsement shall only be made in response to questions posed at a routine press conference. Disbursements for the press conference shall be *de minimis.* The disbursements shall be considered *de minimis* if notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when holding press conferences.

[end of Alternatives D–1 and D–2]

(ii) Contact with the candidate, the candidate's agents and the candidate's authorized committee(s) shall be limited to the communications reasonably necessary to make the endorsement, such as discussions of the candidate's position on issues, but shall not include discussions of campaign strategy or tactics not necessary to make the endorsement.

(7) *Candidate appearances on educational institution premises.* An incorporated nonprofit educational institution which is exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university may allow associated organizations, such as student groups, to sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the general public on the educational institution's premises in accordance with the conditions set forth in paragraphs (c)(7)(i) through (c)(7)(vii) of this section.

(i) The educational institution must have an established policy allowing associated organizations to sponsor such appearances, and this policy shall not favor any one candidate or political party over any other. The policy will not be considered to favor any candidate or political party if any group associated with the educational institution is allowed to sponsor such an appearance in the educational institution's facilities, and any other groups are permitted a similar or comparable opportunity if they so request;

(ii) No candidate, candidate's representative, or representative of a political party shall collect contributions from members of the audience in conjunction with an appearance under paragraph (c)(7) of this section. The educational institution shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under paragraph (c)(7) of this section, and shall not facilitate the making of contributions to any such candidate or party;

(iii) An educational institution shall not, in conjunction with any candidate or party representative appearance under paragraph (c)(7) of this section, expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party, and shall not promote or encourage express advocacy by members of the audience;

(iv) Contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance;

(v) An educational institution may allow representatives of the news media to be present during a candidate or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iii);

(vi) Educational institutions allowing candidates, candidates' representatives and representatives of political parties to make political appearances in the

institution's facilities pursuant to paragraph (c)(7) of this section shall ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and are not conducted as campaign rallies or events; and

(vii) In order to qualify under this section, the educational institution or its associated organization must ensure that admission to the event is available to the institution's academic community or the general public (whichever is invited) without regard to party affiliation or support of any particular candidate. The educational institution or its associated organization, and not the candidate's campaign or the political party, must have control over access to the facility by the audience.

(d) *Registration and get-out-the-vote drives.* A corporation or labor organization may support or conduct voter registration and get-out-the-vote drives which are aimed at employees outside its restricted class and the general public in accordance with the conditions set forth in paragraphs (d)(1) through (d)(6) of this section. Registration and get-out-the-vote drives include providing transportation to the polls.

(1) The corporation or labor organization shall not make any communication expressly advocating the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of any clearly identified political party as part of the voter registration or get-out-the-vote drive.

(2) The registration or get-out-the-vote drive shall not be coordinated with any candidate, group of candidates or political party.

(3) The registration drive shall not be directed primarily to individuals previously registered with one particular political party, as opposed to another political party, or to individuals intended to be registered with a particular party. The get-out-the-vote drive shall not be directed primarily to individuals currently registered with one particular political party as opposed to another political party.

(4) These services shall be made available without regard to the voter's political preference. Information regarding and assistance in registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.

(5) Individuals conducting the registration or get-out-the-vote drive shall not be paid on the basis of the number of individuals registered or transported who support a particular candidate, group of candidates or political party.

(6) The corporation or labor organization shall notify those receiving information or assistance of the requirements of paragraph (d)(4) of this section. The notification shall be made in writing at the time of the registration or get-out-the-vote drive.

(e) *Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, in accordance with the conditions set forth in paragraph (b)(2)(i) through (viii) of this section.

(f) *Candidate debates.* (1) A nonprofit organization qualified under 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.

(2) A *bona fide* broadcaster, newspaper, magazine or other periodical publication may use its own funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and § 114.4(f).

10. 11 CFR part 114 would be amended by adding 114.10 as follows:

§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures.

Version 1 of § 114.10

(a) *Scope.* This section describes those corporations that are exempt from the prohibition on independent expenditures contained in 11 CFR 114.2. It sets out the requirements for demonstrating exempt status, for reporting independent expenditures, and for disclosing the potential use of solicited funds for political purposes. It also describes the circumstances under which an otherwise exempt corporation will become a political committee.

(b) *Definitions.* For the purposes of this section—

(1) *The promotion of political ideas* and *political purposes* include both issue advocacy and election influencing activity.

(2) A corporation's *express purpose* includes:

(i) The corporation's purpose as stated in its charter, articles of incorporation, or bylaws, except that a statement such as "any lawful purpose," "any lawful activity," or other comparable statement will not preclude a finding under paragraph (c) of this section that the corporation's only express purpose is the promotion of political ideas;

(ii) The corporation's purpose as publicly stated by the corporation or its agents; and

(iii) Any purpose evidenced by activities in which the corporation actually engages.

(3)(i) The term *business activities* includes but is not limited to:

(A) The provision of goods or services to members or to the general public which results in income to the corporation from members, the general public, or the provider of the services; and

(B) Advertising or promotional activity which results in income to the corporation, other than in the form of membership dues or donations.

(ii) The term *business activities* does not include political fundraising activities that are expressly described in writing to potential donors as requests for donations that will be used for political purposes.

(iii) For the purposes of paragraph (b)(3) of this section, the term members includes all persons eligible to receive services provided by the corporation or participate in activities conducted by the corporation.

(4) The term *shareholder* has the same meaning as the term stockholder, as defined in 11 CFR 114.1(h).

(c) *Exempt corporations.* For the purposes of this section, an exempt corporation is a corporation:

(1) Whose only express purpose is the promotion of political ideas;

(2) That cannot engage in business activities;

(3) That has:

(i) No shareholders or other persons affiliated in any way that allows them or could allow them to make a claim on the organization's assets or earnings at any time during or after its existence; and

(ii) No persons affiliated in any way that creates a disincentive for them to disassociate themselves from the

corporation if they disagree with its position on any political issue. This includes but is not limited to:

(A) Persons receiving benefits such as credit cards, insurance policies or savings plans, if, in order to receive such benefits, persons must maintain a membership in the corporation;

(B) Persons receiving training or information, other than newsletters or similar publications devoted to the promotion of political ideas, if access to the training or information is conditioned upon maintaining a membership in the corporation; and

(C) Persons receiving other associational benefits, such as professional prestige or business contacts, if the benefits would be lost by failing to maintain a membership in the corporation;

Alternative E–1

(4) That was not established by a business corporation or labor organization, does not directly or indirectly accept donations of anything of value from business corporations or labor organizations, has a written policy against directly or indirectly accepting donations of anything of value from business corporations or labor organizations, and has no organizational relationship with any organization that accepts donations of anything of value from business corporations or labor organizations; and

Alternative E–2

(4) That was not established by a business corporation or labor organization, does not directly or indirectly accept donations of anything of value from business corporations, labor organizations, or any other organization that accepts donations from business corporations or labor organizations, and has a written policy against directly or indirectly accepting donations of anything of value from business corporations or labor organizations; and

[end of Alternatives E–1 and E–2]

(5) That is described in 26 U.S.C. 501(c)(4).

(d) *Permitted corporate independent expenditures.* (1) An exempt corporation may make independent expenditures, as defined in 11 CFR part 109, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(2) Except as provided in paragraph (d)(1) of this section, exempt corporations remain subject to the requirements and limitations of 11 CFR part 114, including those provisions prohibiting corporate contributions, whether monetary or in-kind.

(e) *Exempt corporations; reporting requirements.*

Alternative F–1

(1) *Reporting independent expenditures.* Exempt corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR 109.2. When filing these reports, the corporation shall also indicate the total amount of disbursements it has made since the beginning of the calendar year.

Alternative F–2

(1) *Reporting independent expenditures.* Exempt corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR 109.2. When filing these reports, the corporation shall indicate the total amount of disbursements it made during the previous calendar year.

[end of Alternatives F–1 and F–2]

(2) *Demonstrating exempt status.* Corporations claiming an exemption from the prohibition on independent expenditures shall file, in accordance with 11 CFR 104.4(c), a qualifying statement showing that they qualify for exempt status.

(i) Qualifying statements filed under this section shall be submitted at any time on or before the due date of the corporation's first independent expenditure report. If there is any change in the information provided in the qualifying statement, an amended statement shall be submitted with the corporation's next report of independent expenditures. Amendments may be in the form of a letter, and need only indicate the name of the corporation and the change or correction.

(ii) This qualifying statement may be made either by filing FEC Form ____ or by submitting a letter containing the following information:

(A) The name and address of the corporation, and the signature and printed name of the individual filing the qualifying statement;

(B) A copy of the relevant portions of the corporation's charter, articles of incorporation, or bylaws that shows the stated purpose of the corporation, or a complete quotation of the corporation's stated purpose taken from those documents;

(C) A statement indicating whether the corporation was established by a business corporation or labor organization;

(D) A description of the method by which the corporation ensures that the donations it receives, or cash or anything else of value, do not come directly or indirectly from business corporation or labor organizations;

(E) A statement indicating whether the corporation has an organizational relationship with any organization that accepts donations from business corporations or labor organizations;

(F) A description of the services and benefits that the corporation provide to its members; and

(G) A statement indicating whether the corporation is an organization described in 26 U.S.C. 501(c)(4).

(f) *Solicitation; disclosure of use of contributions for election influencing purposes.* When an exempt corporation solicits donations of anything of value, it shall inform potential donors in writing that it may use their donations for election influencing purposes.

(g) *Non-authorization notice.* Exempt corporations making independent expenditures under this section shall comply with the requirements of 11 CFR 110.11.

Alternative G–1

(h) *When exempt corporations become political committees; major purpose test.* (1) If at any time making independent expenditures becomes the major purpose of an otherwise exempt corporation, the corporation will become a political committee and shall register and report as required by 11 CFR parts 102 and 104, provided that, on the date described in paragraph (h)(2) (i) or (ii), the corporation would be a political committee under 11 CFR 100.5(a) because it had made more than $1000 in independent expenditures since the beginning of that calendar year.

(2) The major purpose of an exempt corporation is making independent expenditures when:

(i) On the closing date of any reporting period, fifty percent or more of its total disbursements since the beginning of the current calendar year were for independent expenditures as defined in 11 CFR 109.1; or

(ii) On the date of an election, as defined in 11 CFR 100.2, fifty percent or more of the corporation's total disbursements for the 60 days preceding the election were for independent expenditures as defined in 11 CFR 109.1.

(3) Before becoming a political committee, an exempt corporation shall eliminate from its cash on hand any funds that do not comply with the limitations and prohibitions of the Act.

Alternative G–2

(h) *When exempt corporations become political committees; major purpose test.* (1) If at any time making independent expenditures becomes the major purpose of an otherwise exempt corporation, the corporation will become a political committee and shall register and report as required by 11 CFR parts 102 and 104, provided that, on the last day of the calendar year referred to in paragraph (h)(2), the corporation would be a political committee under 11 CFR 100.5(a) because it had made more than $1000 in independent expenditures since the beginning of that calendar year.

(2) The major purpose of an exempt corporation is making independent expenditures when fifty percent or more of its total disbursements during a calendar year were for independent expenditures as defined in 11 CFR 109.1.

(3) Before becoming a political committee, an exempt corporation shall eliminate from its cash on hand any funds that do not comply with the limitations and prohibitions of the Act.

[end of Alternatives G–1 and G–2] [end of Version 1]

Version 2 of § 114.10

(a) *Scope.* This section describes those corporations that are, and are not, qualified to make independent expenditures under 11 CFR part 109.

(b) [same as version 1]

(c) *Qualified Corporations.* (1) A qualified corporation is a nonprofit social welfare corporation organized under section 501(c)(4) of the Internal Revenue Code and any other not-for-profit corporation having features more akin to a voluntary political association than a business firm.

(i) "Features akin to a voluntary political association" include, but are not limited to, being formed for the express purpose of promoting political ideas.

(ii) "Features akin to a business firm" do not include selling or renting a membership list to commercial entities for the organization's own fundraising purposes.

(2) A corporation is not qualified under this section if:

(i) It engages in business activity for profit; or

(ii) Has any shareholders or other persons having a claim on the assets or earnings of the organization; or

(iii) Has exclusive membership services creating a financial disincentive for members to disassociate themselves from the corporation; or

(iv) Was established by, or accepts contributions from, a corporation or labor organization organized under section 501(c)(3) of the Internal Revenue Code; or

(v) Sponsors or is affiliated with any separate segregated fund or political action committee organized under the Federal Election Campaign Act; or

(vi) Is ineligible to file a Tax Form 990EZ.

(d) [same as version 1]

(e) *Exempt corporations; reporting requirements.* (1) [same as version 1]

(2) Corporations claiming qualification to make independent expenditures shall file, simultaneously with any report due under § 109.2, a qualifying statement made either by FEC form _____ or by letter which states the corporation complies with section (c)(1) of this section and does not contain any of the features listed in part (c)(2) (A)–(F) of this section.

(f) [same as version 1]

(g) [same as version 1]

(h) [same as version 1]

11. 11 CFR part 114 would be amended by revising paragraph (b) of § 114.12 to read as follows:

§ 114.12 Miscellaneous provisions.

* * * * *

(b) Notwithstanding any other provision of part 114, a corporation or a labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms.

* * * * *

Dated: July 17, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92–17304 Filed 7–28–92; 8:45 am]

BILLING CODE 6715–01–M

federal register

Wednesday
July 29, 1992

Part III

Office of Personnel Management

5 CFR Parts 831 et al.

Court Orders Affecting Retirement Benefits; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, 843, 846, and 890

RIN 3206-AE14

Court Orders Affecting Retirement Benefits

AGENCY: Office Of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to improve processing of court orders affecting retirement benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The final regulations establish rules of interpretation and procedures for processing court orders that divide retirement benefits or award survivor annuities, provide model paragraphs for use in preparing court orders, and create a single uniform set of procedures for processing court orders under FERS and CSRS. The regulations are needed to streamline OPM's procedures to allow disputes over the interpretation of State court orders to be brought to closure more easily and quickly, minimizing hardship to the former spouse.

EFFECTIVE DATE: August 28, 1992.

ADDRESSES: Send court orders affecting CSRS or FERS benefits to Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044; or deliver to Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On January 2, 1992, we published (at 57 FR 120) proposed regulations concerning court orders affecting retirement benefits to replace the existing separate sets of interim regulations under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). We received six comments on the proposed regulations. The comments are discussed later in this supplementary information.

These regulations apply only to court orders affecting CSRS and FERS basic benefits administered by OPM. These regulations do not apply to court orders affecting the Thrift Savings Plan. The Federal Retirement Thrift Investment Board administers the Thrift Savings Plan. The Board processes court orders relating to the Thrift Savings Plan pursuant to regulations found at subpart I of part 1650 of title 5, Code of Federal Regulations. Court orders relating to the Thrift Savings Plan must be submitted directly to the Board's recordkeeper, the National Finance Center in New Orleans.

1. History of the Current Regulations

On May 13, 1985, we published (at 50 FR 20064) interim regulations which, in part, revised our procedures for processing court orders affecting benefits under CSRS. Those interim rules were necessary to implement the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) (Pub. L. 98-615).

On September 8, 1986, we published (at 51 FR 31927) interim regulations amending the interim regulations published May 13, 1985. The September 8th interim regulations implemented several changes to CSRSEA made by the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99-251). The September 8th interim regulations also included changes based on comments received in response to the interim regulations published May 13, 1985.

On February 3, 1987, we published (at 52 FR 3209) interim regulations amending the interim regulations for processing court orders under CSRS to implement the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99-556).

On March 12, 1990, we published (at 55 FR 9093) amendments to the interim regulations implementing CSRSEA. The amendments included revised guidelines explaining how we interpret certain language used in court orders affecting CSRS benefits.

On December 30, 1986, we published (at 51 FR 47021) proposed regulations for revising our procedures for processing court orders under CSRS to expedite payments to the former spouses. On September 9, 1991, we withdrew (at 56 FR 45883) those proposed regulations.

On December 31, 1986, we published (at 51 FR 47190) interim regulations for processing court orders affecting FERS basic benefits. Those interim regulations implemented for FERS the procedures that we had proposed the day before for CSRS. This final rule replaces the interim regulations published December 31, 1986, for court orders affecting FERS benefits.

This final rule replaces both the CSRS interim regulations published May 13, 1985, as amended, and the FERS interim regulations published December 31, 1986, for court orders affecting retirement benefits.

2. Reasons to Change Processing Procedures

These final regulations will make it easier for the parties in a divorce to ensure that OPM will divide CSRS or FERS benefits, or provide a survivor benefit, in accordance with their wishes. In enacting the provisions allowing OPM to honor the decisions of State courts respecting a former spouse's interest in an employee's retirement benefits, the intent of Congress was that the Federal Government not insert itself into marital property disputes. These final regulations assure that the dispute-resolution role rests in the hands of the State courts as was originally intended by the Congress.

Under the current interim regulations for court orders, a process has evolved that, rather than truly protecting the rights of all parties, often simply resulted in delays in payments to former spouses and hardships to them. Under the existing interim regulations, when we receive a court order that awards a benefit to a former spouse of a CRS or FERS retiree, the retiree can protest OPM's decision through frequently lengthy administrative procedures. This may create financial hardship because, under CSRS procedures, no money is paid while the administrative proceedings are pending. Since the aftermath of many divorces is often an emotionally charged situation, some retirees deliberately use the process to delay payments for as long as possible.

These final regulations synthesize our experience in processing court orders since 1978, and contain two important changes that we believe will improve our service to people affected by these orders. First, the regulations will make it easier for people to submit court orders that will be acceptable to OPM. The regulations are very detailed as to what constitutes a court order that is acceptable for processing, and as to the exact meaning of court order terminology. The definitions in these regulations are designed to give the most commonly-used meaning to words most often encountered in court orders. This will allow OPM to accept as many court orders as possible rather than rejecting orders, which would require the parties to return to State courts. To further facilitate preparation of acceptable orders, appendices to the regulations contain model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet OPM's processing requirements.

Second, because the regulations prescribe in detail what is and is not acceptable for processing, OPM can now assume the appropriate role for itself, which is a ministerial role, rather than a mediator in marital property disputes. This role belongs to the State courts. If a court order is so flawed that it is not sufficiently clear to satisfy our requirements, the appropriate action is for the parties to return to the State court to correct the problem. Likewise, if the retiree contends that the court intended its order to have a different meaning than the clear meaning it has under these regulations, the proper forum for the retiree's complaint is the State court. OPM will require the employees and former spouses to settle the disputes in the State courts where they belong, not in Federal proceedings. The courts issuing the orders are in the best position to determine the meaning of their own orders. This will result in faster resolution of disputes and eliminate the delay in payments to former spouses with court orders that comply with the requirements of the regulations.

3. Changes From the Existing Interim Regulations That Have Broad Application

These regulations consolidate the CSRS and FERS regulations concerning court orders affecting retirement benefits into a single set of regulations applicable to both retirement systems. The final regulations include the changes that we proposed to make the regulations easier to use by both the legal community in drafting and submitting court orders and by OPM staff in applying the regulations to court orders. These final regulations distinguish clearly among regulations that affect employee annuities, refunds of employee contributions, and former spouse survivor annuities. Under the existing interim regulations, some sections contain regulations pertaining to more than one of these different benefits. This resulted in a lack of clarity about which regulatory provisions apply to which types of benefit. These final regulations also divide rules into separate subparts covering procedures, requirements, and terminology. These changes make it easier for the legal community to focus on the provisions that effect benefits involved in the case with which they are concerned. A side effect of clearly dividing the regulations by the type of benefits the order seeks to affect is repetition of provisions that apply to more than one type of benefit. The repetition has added greatly to the length of these regulations; however, separate provisions about the effect of court orders on different types of benefits will simplify this very difficult subject and enhance the usability of the regulations.

As we proposed, these final regulations change several terms that have caused confusion or misunderstandings under the current regulations. We hope that the new terms will make the regulations easier to understand.

The term, "employee retirement benefits," that is used in the current regulations has been replaced by its two component parts, "Employee annuities" and "Refunds of employee contributions." The failure to distinguish between these two distinct types of benefits in the current regulations makes the regulations more complex and difficult to understand. Although most of the rules relating to "employee retirement benefits"apply to both annuities and refunds, some of the rules affecting "employee retirement benefits" make sense only for annuities, and others, only for refunds. Treating annuities and refunds separately makes the regulations longer; however, we believe that it also makes them simpler for attorneys and others to use.

The term, "former spouse annuity," which is used in the current regulations, has been replaced by "former spouse survivor annuity." Comments on prior regulations demonstrated that most commenters did not understand that "former spouse annuity" in the current regulations is only used when we are referring to the survivor benefit payable to a former spouse. The term has never included payments to a former spouse during a retiree's lifetime.

The term, "qualifying court order," which is used in the existing interim regulations, has been replaced by "court order acceptable for processing." The principal reason for this change is to eliminate any similarity in terminology between court orders affecting CSRS and FERS benefits and "qualified domestic relations orders," QDRO's, under the Employees Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.* In addition, the new term is more consistent with our role under the proposed regulations as the ministerial processor of court orders.

4. Preparing a Court Order

A court order may affect any of three types of retirement benefits paid by OPM. The regulations treat each of the three—employee annuities, refunds of employee contributions, and survivor annuities—independently. In preparing a court order, attorneys should keep in mind that we consider each of the three types of awards separate and independent of the other two, and should exercise great care in each type of benefit they intend to affect. Our requirement that the award of each type of benefits be independent does not mean that the court award of one type of benefit cannot affect another. For example, awarding a former spouse survivor annuity requires a reduction in the employee annuity. If the former spouse has been awarded a portion of the gross or net employee annuity, the former spouse's portion of the employee annuity will be affected.

A complete court order requires three separate provisions—one addressing each type of benefit that the court can affect. However, frequently, courts intend to award only a portion of the employee annuity or a survivor annuity, rather than a complete retirement package. The regulatory structure is designed to maintain a clear separation between court orders affecting different types of benefits.[1] This permits a court that intends only to divide an employee annuity to consider only subparts A, B, C, and F of these regulations. Similarly, if the court intends to award only a survivor annuity, only subparts A, G, H, and I of these regulations apply.

5. Changes Required by U.S. Court of Appeals Decision

Section 838.806 and newly redesignated § 838.1004(e) (formerly § 831.1704(e)) have been revised to comply with the decision of the United States Court of Appeals for the Federal Circuit in the case of *Newman* v. *Love*, No. 91–3268 (Fed. Cir. April 15, 1992).

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[1] Subpart A contains definitions and other material of significance to all types of court orders affecting CSRS or FERS. The rest of the part is divided into three major units depending on whether the court order applies to employee annuities, refunds of employee contributions, or former spouse survivor annuities. For each unit, separate subparts cover procedures for processing, requirements that court orders must satisfy, and definitions of terms frequently used in court orders. (The terminology section for employee annuities and refunds of employee contributions are combined to avoid excessive duplication.

The subparts (B, D and G,) regulating procedures contain rules relating to former spouse filing requirements and to our actions upon receipt of court orders. In addition, they contain rules and limitations that the State court cannot change such as such as when benefits are paid. The subparts (C, E, and H) regulating requirements that court orders must satisfy certain rules pertaining to the requirements that a court order must meet to be acceptable for processing. The subparts (F and I) defining terms explains our understanding of the meaning of terms commonly used in court orders. By choosing the correct term, the State court can tell us exactly what to do. We assume that State courts are familiar with our assigned meanings of these terms and have used them in the way that they are defined in these subparts.

The Court found that OPM has authority to honor a court order for survivor annuity, if the order is the first order addressing marital property issues, even if the order is issued after the retirement of the former employeee OPM's existing interim regulations and the proposed rules interpreted the law (sections 8341(h)(4) and 8445(d) of title 5, United States Code) to prevent us from honoring a post-retirement court order that ordered us to allow a survivor annuity if this order was not issued prior to, or as part of, the divorce decree.

6. Comments on the Proposed Regulations

As stated above, we received six comments on the proposed regulations. The comments were generally supportive of the proposed regulations, especially of the provisions providing former spouses with prompt notice whether a court order was acceptable for processing.

We have considered all of the comments. Many of the comments suggested editorial changes. Only substantive comments are discussed below.

The Federal Retirement Thrift Investment Board requested that we clarify that these regulations apply only to CSRS and FERS basic benefits administered by OPM. We agree with this suggestion and have included a detailed clarification in the second paragraph of this supplementary information and have added a new paragraph (d) in § 838.101 to expressly state that these regulations do not apply to the Thrift Saving Plan.

One commenter objected to the provisions in § § 838.302 and 838.803 that provide that any court order labelled a "Qualifying Domestic Relations Order" or "QDRO" is not acceptable for processing. The commenter complains that a former spouse could be deprived of benefits because an attorney or court makes a "trivial" error. (This is particularly true in cases affecting survivor annuity where we are prohibited by statute from accepting a modification after the retirement or death of the employee.)

ERISA created the term QDRO to describe a court order that summarizes the division of retirement benefits under ERISA plans. We decided to prohibit use of this label because we have seen from experience that attorneys prepare these orders on the assumption that they can provide any benefits available under ERISA to CSRS and FERS.[2] Since we are exempt from ERISA, some provisions that ERISA plans must honor do not apply to us. The current practice of honoring as much of a QDRO as we can under our law has been difficult and controversial even when we were attempting to comply with the court's intent as well as its words. For our function to be ministerial, we and the court must be speaking the same language. To assure that the court has used our terminology, rather than ERISA's terminology, we proposed to prohibit QDRO's.

The proposed total ban on QDRO's is more severe than necessary to accomplish its purpose. We have revised sections 838.302 and 838.803 to relax the total ban on QDRO's to accept court orders labelled QDRO's if the court orders expressly state that they are written in conformity with our regulations. We do not want to create an unnecessary trap for the uninformed. Since we can guarantee that the purpose of the ban—that the court understands that we are exempt from ERISA and that the court is using the terminology as provided in the regulations—is satisfied by requiring that any QDRO mention our regulations, we will accept QDRO's that expressly acknowledge that they are written to conform with our regulation. In addition, we have added a model paragraph that could be used for this purpose.

The requirement that a QDRO expressly state that it conforms with the regulations is necessary because even if the QDRO's terminology is acceptable, the court's intent may have been that the terms have different meanings than those assigned under these regulations. Abandoning the ban on QDRO's without requiring that QDRO's mention our regulations undermines the reasonableness of our assumption that the court is using our terminology, rather than ERISA terminology. That assumption is necessary for our actions to be ministerial, rather than having to interpret each court order.

One commenter objected to § 838.302(b), which provides that a court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not acceptable for processing. The commenter stated that the order should be acceptable with respect to the former spouse's portion of the employee annuity during the lifetime of the employee. Under these regulations the order would not be acceptable for any purpose because, in view of the fact that the court will have demonstrated its lack of awareness that the statutory authority for a State court to award the former spouse a share of employee annuity stops at the employee's death (a survivor annuity award must be specifically included in the court order), we do not know what the court intended to provide. This lack of awareness about the nature of our benefits indicates that the court, having considered the distribution of marital property as a whole, and having approved a distribution that, by law, cannot be honored with respect to a significant part of it (survivor benefits), needs to issue a new order. As the commenter noted, an amended court order can generally substitute acceptable language and be effective retroactively, as described in §§ 838.225 and 838.234.

One commenter objected to our failure to include a provision in the regulations to allow the court to correct errors in survivor annuity awards. Section 8341(h)(4) of title 5, United States Code, provides a strict statutory bar to any modification of survivor annuity provisions in a court order after the retirement or death of the employee. We do not allow corrections because the law simply bars all such modifications. we note that in *Newman* v. *Love, supra,* the court, considering the statutory bar to these modifications, determined that the first order dividing marital property is not a modification for this purpose.

One commenter questioned the lack of a provision in the proposed regulations on administrative or judicial appeal rights. The commenter applauds our desire to follow State court orders rather than to mediate between the court and the parties. However, the commenter suggests that the regulation should clearly provide that appeals from OPM decisions based on interpretation of Federal law are still appropriate. We have added § 838.136 to clarify the situations in which administrative appeal rights are available.

Actions taken by OPM in cases under these regulations are those ordered by the State court and for this reason they are not appealable to MSPB. MSPB does not have authority to review the State court order, and because we are merely following the explicit instructions of the court, appeal to MSPB is inappropriate. This will assure that marital property

[2] The most important difference between ERISA plans and CSRS and FERS is that under ERISA the former spouse's share of the benefit can begin when the employee reaches the minimum retirement age, even if the employee is still working. The availability of this early benefit, or lack of availability, can seriously alter negotiations over the settlement agreement.

distribution disputes will be resolved by the State courts, as Congress originally intended. This approach ensures the quickest final resolution of these disputes by avoiding a Federal administrative appeal level that cannot decide on the merits of the distribution. The parties to the divorce may return to the State court to resolve the dispute, instead of delaying the final resolution by resorting to an inappropriate Federal administrative review.

Issues concerning the validity of regulations themselves are issues of Federal law. Accordingly § 838.136 clarifies that if the issue in dispute is the validity of the regulations, our final decision on that issue is appealable to MSPB.

In cases in which an appeal to MSPB is authorized, we will not delay withholding from the employee annuity or payment to the former spouse during the pendency of the appeal. An allegation that a provision of these regulations is invalid does not suspend operation of that provision.

One commenter objected to the proposed rule that any portion of an employee annuity awarded to the former spouse reverts to the employee upon the death of the former spouse unless a court order provides otherwise. The proposed regulation would change the procedures that we currently follow on the death of the former spouse but this change would rarely alter the ultimate result. When the former spouse dies and an employee annuity continues to be payable, the current interim regulations require us to request further instructions from the court that issued the order. Usually, the court does not respond, which the current regulations provide has the same effect as instructing us to restore the former spouse's share to the employee. The proposed regulations merely would eliminate the step of contacting the court, but would not preclude an amended court order to require the deceased former spouse's share to be sent to another person.

The commenter suggests that the former spouse's heirs, rather than the employee, receive the former spouse's share if the court order provides no instructions concerning payments after the death of the former spouse. Since enactment of the statute authorizing State courts to divide employee annuities, we have consistently maintained that the statute did not authorize State courts to require us to distribute payments to multiple payees. Accordingly, our regulations have always included a provision that we would not pay heirs directly.[3] We will pay heirs indirectly if the court orders us to pay a central account—such as a single bank account, an attorney's trust account, or the registry of the court—for distribution to the heirs. This allows distribution as the court wishes while avoiding problems associated with payment of small shares. Accordingly, we are retaining the provision in the proposed regulations.

One commenter asked about the application of these regulations to voluntary contributions and excess deductions. Voluntary contributions may be made by CSRS-covered employees in addition to normal retirement deductions. They earn interest and may be used to purchase additional annuity. Excess deductions are retirement deductions taken from the salary of CSRS-covered employees who service exceeds the amount necessary (usually 41 years and 11 months) to qualify for the maximum annuity (80 percent of average salary).

These regulations do not apply to voluntary contributions or refunds of excess deductions. Section 8345(j) of title 5, United States Code, provides that State courts in divorce or legal separation proceedings may affect payments under CSRS "which would otherwise be made to an employee or Member based upon his service." OPM's payments based on voluntary contributions (regardless of whether the payment is as an annuity or in a lump sum) is based on the amount of the voluntary contributions plus interest. The payments are not "based on his service." Accordingly, voluntary contributions fall outside the statutory authorization for court orders to affect CSRS benefits.

Section 8342(h) of title 5, United States Code, provides that, at the retirement or death of the employee, the balance of excess deductions not applied toward the service credit deposits is deemed a voluntary contribution. Accordingly, when we pay excess deductions to the employee we are paying "voluntary contributions," and for this reason the payment is not subject to a State court order.

One commenter suggested that a former spouse should be able to begin to receive benefits when the employee reaches the age and service requirements for retirement, even if the employee continues to work or otherwise fails to apply for retirement. The statutes authorizing us to honor State court orders only grant State courts authority to affect payments that would otherwise be made to the employee. Because no payments are made to the employee until the employee separates from Federal service and files and application, we have no statutory authority to pay the former spouse before the separation and application requirements have been met.

[3] The ban on direct payment to heirs has one exception. We accept court orders that direct us, after the death of the former spouse, to pay the children of former spouse and the employee.

7. Other Amendments to the Proposed Regulations

We have made minor changes in several other provisions. The supplementary information for the proposed regulations stated that we were delaying the implementation date for the regulations to give the public, especially the legal community, notice of the new requirements and standards. We intended the delay to provide time for dissemination of information about the new requirements and standards. The proposed regulations would have established July 1, 1992, as the date when the new requirements and procedures would begin to apply. Section 838.101(c) establishes January 1, 1993, as the new date when we will begin processing court orders under the new procedures established by these regulations. Court orders that we receive before that date will be processed under subpart J of part 838. The procedures under subpart J contain the existing interim CSRS regulations. Of course, the model language in appendix A to subparts F and I is available for immediate use. Using the model language produces the same award under subpart J (the regulations covering court orders that we receive before the implementation date) as under the new regulations (subparts A through I).

We have amended § 838.421(b)(3) to eliminate CSRS or FERS claim numbers from the list of examples of identifying information that should be provided for court orders directed at refunds of employee contributions. Separated employees applying for refunds will not have such claim numbers.

We have amended § 838.623(c)(2) concerning how we use the amount of unused sick leave in computations of the former spouse's share of an employee annuity to state that these computations only apply to employee annuities under CSRS or to the CSRS component of a FERS annuity. Unused sick leave is not used in the computation of an annuity under FERS rules. Accordingly, the rules for determining when to include sick leave in computing the former spouse's share have no application to normal FERS benefits.

We have eliminated proposed section 838.725 and redesignated section 838.726 as section 838.725. Proposed section 838.725 stated that we would not accept an amended court order awarding a survivor annuity if issued after the retirement or death of the employee. The proposed section 838.725 has been eliminated because section 838.806 contains specific detailed requirements on amended court orders and covers all the information previously contained in proposed section 838.725.

We have added § 838.923 concerning cost-of-living adjustments (COLA's) on the future survivor annuity rate before the death of a retiree. Section 838.735 provides that we will add COLA's to all former spouse survivor annuities actually being paid. The new § 838.923 provides that we will apply COLA's (occurring after the retirement of the employee) to the future survivor annuity rate unless the court order expressly orders us not to include them. Model paragraph ¶704 has been amended to include sample language for excluding COLA's before the death of a retiree.

The proposed regulations included approximately 45 changes to Title 5 of the Code of Federal Regulations to conform existing regulations with the proposed regulatory structure for court orders affecting retirement benefits. Since that time, we have discovered approximately 15 more provisions requiring conforming amendment. Most of these changes correct cross references to sections or subparts that are being redesignated or removed by these regulations.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects

5 CFR Parts 831, 841, 842, 843, and 846

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

1. Part 838 is added to read as follows:

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

Sec.

838.101 Purpose and scope.
838.102 Regulatory structure.
838.103 Definitions.

Statutory Limit on Court's Authority

838.111 Exemption from legal process except as authorized by Federal law.

Division of Responsibilities

838.121 OPM's responsibilities.
838.122 State courts' responsibilities.
838.123 Claimants' responsibilities.
838.124 Employees' and retirees' responsibilities.

Procedures Applicable to All Court Orders

838.131 Computation of time.
838.132 Payment schedules.
838.133 Minimum awards.
838.134 Receipt of multiple court orders.
838.135 Settlements.
838.136 Administrative Appeal Rights.

Address for Filing Court Orders With OPM

Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

838.201 Purpose and scope.

Availability of Funds

838.211 Amounts subject to court orders.

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Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

§ 838.101 Purpose and scope.

(a)(1) This part regulates the Office of Personnel Management's handling of court orders affecting the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), both of which are administered by the Office of Personnel Management (OPM). Generally, OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of the former employee's or Member's retirement benefits or a survivor annuity to a former spouse.

(2) In executing court orders under this part, OPM must honor the clear instructions of the court. Instructions must be specific and unambiguous. OPM will not supply missing provisions, interpret ambiguous language, or clarify the court's intent by researching individual State laws. In carrying out the court's instructions, OPM performs purely ministerial actions in accordance with these regulations. Disagreement between the parties concerning the validity or the provisions of any court order must be resolved by the court.

(b) This part prescribes—

(1) The requirements that a court order must meet to be acceptable for processing under this part;

(2) The procedures that a former spouse must follow when applying for benefits based on a court order under sections 8341(h), 8345(j), 8445 or 8467 of title 5, United States Code;

(3) The procedures that OPM will follow in honoring court orders and in making payments to the former spouse; and

(4) The effect of certain words and phrases commonly used in court orders affecting retirement benefits.

(c)(1) Subparts A through I of this part apply only to court orders received by OPM on or after January 1, 1993.

(2) Subpart J of this part applies only to court orders received by OPM before January 1, 1993.

(d) This part has no application to the Thrift Savings Plan described in subchapter III of chapter 84 of title 5, United States Code.

§ 838.102 Regulatory structure.

(a) This part is organized as follows:

(1) Subpart A contains information and rules of general application to all court orders directed at CSRS or FERS retirement benefits.

(2) Subparts B and C of this part contain information about court orders directed at ongoing employee annuity payments.

(3) Subparts D and E of this part contain information about court orders directed at refunds of employee contributions.

(4) Subpart F of this part contains information about the effect of words and phrases commonly used in court orders affecting ongoing employee annuity payments and refunds of employee contributions.

(5) Subparts G, H, and I of this part contain information about court orders awarding former spouse survivor annuities.

(6) Subpart J of this part contains the rules applicable to court orders filed under procedures in effect prior to the implementation of this part. These rules continue to apply to court orders received by OPM before January 1, 1993.

(b) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(c) Part 581 of this chapter contains information about garnishment of Government payments including salary and CSRS and FERS retirement benefits.

(d) Parts 294 and 297 of this chapter and §§ 831.106 and 841.108 contain information about disclosure of information from OPM records.

(e) Subpart V of part 831 of this chapter and subpart G of part 842 of this chapter contain information about how

court orders affect eligibility to make an alternative form of annuity election.

(f) Part 1600 of this title contains information about court orders affecting the Federal Employees Thrift Savings Plan.

(g) Subpart F of part 831 of this chapter, subpart F of part 841 of this chapter, and part 843 of this chapter contain information about entitlement to survivor annuities.

(h) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about refunds of employee contributions and lump-sum death benefits.

(i) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

§ 838.103 Definitions.

In this part (except subpart J)—

Civil Service Retirement System or *CSRS* means the retirement system for Federal employees described in subchapter III of chapter 83 of title 5, United States Code.

Court order means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands, or any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

Court order acceptable for processing means a court order as defined in this section that meets the requirements of subpart C of this part to affect an employee annuity, subpart E of this part to affect a refund of employee contributions, or subpart H of this part to award a former spouse survivor annuity.

Employee means an employee or Member covered by CSRS or FERS.

Employee annuity means the recurring payments under CSRS or FERS made to a retiree. "Employee annuity" does not include payments of accrued and unpaid annuity after the death of a retiree under section 8342(g) or section 8424(h) of title 5, United States Code.

ERISA means the Employees Retirement Income Security Act, 29 U.S.C. 1001 *et seq.*

Federal Employees Retirement System or *FERS* means the retirement system for Federal employees described in chapter 84 of title 5, United States Code.

Former spouse means (1) in connection with a court order affecting an employee annuity or a refund of employee contributions, a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) in connection with a court order awarding a former spouse survivor annuity, a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at least 18 months of civilian service creditable under FERS, and whose marriage to the employee of retiree was terminated prior to the death of the employee or retiree.

Former spouse survivor annuity means a recurring benefit under CSRS or FERS, or the basic employee death benefit under FERS as described in part 843 of this chapter, that is payable to a former spouse after the employee's or retiree's death.

Gross annuity means the amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Member means a Member of Congress covered by CSRS or FERS.

Net annuity means the amount of monthly annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums under section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this chapter, (3) deducted for life insurance premiums under section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, (5) properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled, or (6) properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled. Unless the court order expressly provides otherwise, *net annuity* also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Reduction to provide survivor benefits means the reduction required by section 8339(j)(4) or section 8419(a) of title 5, United States Code.

Refund of employee contributions means a payment of the lump-sum credit to a separated employee under section 8342(a) or section 8424(a) of title 5, United States Code. *Refund of employee contributions* does not include lump-sum payments made under section 8342(c) through (f) or section 8424(d) through (g) of title 5, United States Code.

Retiree means a former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee. *Retiree* does not include a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest. Self-only annuity means the recurring payments to a retiree who has elected not to provide a survivor annuity to anyone. Unless the court order expressly provides otherwise, self-only annuity also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Separated employee means a former employee or Member who has separated from a position in the Federal Government covered by CSRS and FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively, and is not currently employed in such a position, and who is not a retiree.

Statutory Limit on Court's Authority

§ 838.111 Exemption from legal process except as authorized by Federal law.

(a) Employees, retirees, and State courts may not assign CSRS and FERS benefits except as provided in this part.

(b) CSRS and FERS benefits are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

Division of Responsibilities

§ 838.121 OPM's responsibilities.

OPM is responsible for authorizing payments in accordance with clear, specific and express provisions of court orders acceptable for processing.

§ 838.122 State courts' responsibilities.

State courts are responsible for—

(a) Providing due process to the employee or retiree;

(b) Issuing clear, specific, and express instructions consistent with the statutory provisions authorizing OPM to provide benefits to former spouses and the requirements of this part for awarding such benefits;

(c) Using the terminology defined in this part only when it intends to use the meaning given to that terminology by this part;

(d) Determining when court orders are invalid; and

(e) Settling all disputes between the employee or retiree and the former spouse.

§ 838.123 Claimants' responsibilities.

Claimants are responsible for—

(a) Filing a certified copy of court orders and all other required supporting information with OPM;

(b) Keeping OPM advised of their current mailing addresses;

(c) Notifying OPM of any changes in circumstances that could affect their entitlement to benefits; and

(d) Submitting all disputes with employees or retirees to the appropriate State court for resolution.

§ 838.124 Employees' and retirees' responsibilities.

Employees and retirees are responsible for—

(a) Raising any objections to the validity of a court order in the appropriate State court; and

(b) Submitting all disputes with former spouses to the appropriate State court for resolution.

Procedures Applicable to all Court Orders

§ 838.131 Computation of time.

(a) The rules applicable for computation of time under §§ 831.107 and 841.109 of this chapter apply to this part.

(b)(1) Appendix A of this subpart lists the proper addresses for submitting court orders affecting CSRS and FERS benefits.

(2) A former spouse should submit the documentation required by this part to the address provided in Appendix A of this subpart. The component of OPM responsible for processing court orders will note the date of receipt on court orders that it receives.

(3) If a court order is delivered to OPM at an address other than the address in Appendix A of this subpart, the recipient will forward the court order to the component of OPM responsible for processing court orders. However, OPM is not considered to have received the court order until the court order is received in the component of OPM responsible for processing orders.

§ 838.132 Payment schedules.

(a) Under CSRS and FERS, employee annuities and survivor annuities are payable on the first business day of the month following the month in which the benefit accrues.

(b) In honoring and complying with a court order, OPM will not disrupt the payment schedule described in paragraph (a) of this section, despite any provision in the court order directing a different schedule of accrual or payment of amounts due the former spouse.

§ 838.133 Minimum awards.

Payments under this part will not be less than one dollar per month. Any court order that awards a former spouse a portion of an employee annuity or a former spouse survivor annuity in an amount of less than one dollar per month will be treated as an award of an annuity equal to one dollar per month.

§ 838.134 Receipt of multiple court orders.

(a) Except as provided in paragraph (c) of this section, for court orders affecting employee annuities or awarding former spouse survivor annuities, in the event that OPM receives two or more court orders acceptable for processing—

(1) When the court orders affect two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under § 838.211 or § 838.711.

(2) When two or more court orders relate to the same former spouse or separated spouse, the one issued last will be honored.

(b)(1) Except as provided in paragraph (c) of this section, for court orders affecting refunds of employee contributions, in the event that OPM receives two or more court orders acceptable for processing—

(i) When the court orders affect two or more former spouses—

(A) The refund will not be paid if either court order prohibits payment of the refund of contributions; otherwise,

(B) The court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When two or more court orders relate to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the refund of employee contributions.

(c) With respect to issues relating to the validity of a court order or to the amount of payment—

(1) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from the same jurisdiction, OPM will consider only the latest court order; or

(2) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from different jurisdictions—

(i) If one of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the court order issued by that jurisdiction; or

(ii) If none of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the latest court order.

§ 838.135 Settlements.

(a) OPM must comply with the terms of a properly filed court order acceptable for processing even if the retiree and the former spouse agree that they want OPM to pay an amount different from the amount specified in the court order. Information about OPM's processing of amended court orders is contained in §§ 838.225 and 838.725.

(b)(1) OPM will not honor a request from the former spouse that an amount less than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

(2) OPM will not honor a request from the retiree that an amount greater than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

§ 838.136 Administrative appeal rights.

(a) Issues concerning application of these regulations are not appealable to the Merit Systems Protection Board. OPM's actions to apply these regulations are not subject to further administrative review.

(b)(1) Issues concerning the validity of these regulations are appealable to the Merit Systems Protection Board. Such an appeal must be filed in accordance with the procedures established by the Board and may not be filed before OPM has issued its final decision, including a notice of the right to appeal, on the validity of the regulation. Such an appeal is limited to the issue of the validity of the regulation.

(2) Any claim that a provision of these regulations is invalid, must be presented to the Merit Systems Protection Board before the validity of the regulation may be reviewed in the Federal courts.

Address for Filing Court Orders With OPM

Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits

(a) The mailing address for delivery of court orders affecting CSRS or FERS benefits by the United States Postal Service is—

Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044

(b) The address for delivery of court orders affecting CSRS or FERS benefits by process servers, express carriers, or other forms of handcarried delivery is—

Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

§ 838.201 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders directed at employee annuities under CSRS or FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award a portion of an employee annuity to a former spouse.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of an employee annuity based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart C of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to affect an employee annuity.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on employee annuity of a court order acceptable for processing.

Availability of Funds

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

(i) Separation from a position in the Federal service covered by CSRS or FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively;

(ii) Application for payment of the employee annuity by the former employee; and

(iii) The former employee's immediate entitlement to an employee annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at employee annuities.

(3) OPM cannot pay a former spouse a portion of an employee annuity before the employee annuity begins to accrue.

(b) Payment to a former spouse under a court order may not exceed the net annuity.

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a court order acceptable for processing.

Application and Processing Procedures

§ 838.221 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of an employee annuity. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at employee annuity;

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or FERS or died, the mailing address of the employee.

(c)(1) When court-ordered payments are subject to termination (under the terms of the court order) if the former spouse remarries, no payment will be made until the former spouse submits to OPM a statement in the form prescribed by OPM certifying—

(i) That a remarriage has not occurred;

(ii) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage; and

(iii) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage.

(2) OPM may subsequently require periodic recertification of the statements required under paragraph (c)(1) of this section.

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the order;

(iii) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit; and

(iv) That, if he or she disagrees with the amount of the monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins or accrue, and if known, the date on which OPM commences payment under the court order;

(iv) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit;

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vi) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree dies after payments from an employee to a former spouse have begun, OPM will inform the former spouse that the employee or retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree.

(c) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is not in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) That benefits cannot begin to accrue until the employee retires;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit; and

(iv) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee, separated employee, or retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit;

(iv) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(v) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the accrual of former spouse benefits as determined under § 838.231.

§ 838.223 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the court order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart C of this part.

§ 838.224 Contesting the validity of court orders.

(a) An employee, separated employee, or retiree who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares the court order submitted by the former spouse is invalid; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until OPM receives a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

§ 838.225 Processing amended court orders.

(a) If the employee, separated employee, retiree, or former spouse submits an amended court order pertaining to payment of a portion of the employee annuity, OPM will process the amended court order prospectively only, effective against employee annuity accruing beginning the first day of the second month after OPM receives the amended court order.

(b) A court order is not effective to adjust payments prior to the first day of the second month after OPM receives the court order unless—

(1) The court order—

(i) Expressly directs OPM to adjust for payment made under the prior court order; and

(ii) Determines the total amount of the adjustment or the length of time over which OPM will make the adjustment; and

(iii) Provides a specific monthly amount of the adjustment or a formula to compute the amount of the monthly adjustment; and

(2) Annuity continues to be available from which to make the adjustment.

Payment Procedures

§ 838.231 Commencing date of payments.

(a) A court order acceptable for processing is effective against employee annuity accruing beginning the first day of the second month after OPM receives the court order.

(b)(1) OPM will not begin payments to the former spouse until OPM receives all the documentation required by § 838.221 (b) and (c).

(2) If payments are delayed under paragraph (b)(1) of this section, after OPM receives all required documentation, it will authorize payment of the annuity that has accrued since the date determined under paragraph (a) of this section but the payment of which was delayed under paragraph (b)(1) of this section.

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree are restored, payments to the former spouse will also resume subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

§ 838.233 Termination of payments.

A former spouse portion of an employee annuity stops accruing at the earliest of—

(a) The date on which the terms of the court order require termination;

(b)(1) The last day of the first month before OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order no later than 20 days before the end of the month; or

(2) The last day of the month in which OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order than 20 days before the end of the month; or

(c) The last day of the first month after OPM receives an amended court order;

(d) The last day of the first month before the death of the retiree; or

(e) Except as provided in § 838.237, the date on which the former spouse dies.

§ 838.234 Collection of arrearages.

Specific instructions are required before OPM may pay any arrearage. Except as provided in § 838.225(b), OPM will not increase a former spouse's share of employee annuity to satisfy an arrearage due the former spouse. However, under § 838.225, OPM will prospectively honor the terms of an amended court order that either increases or decreases the court order's entitlement.

§ 838.235 Payment of lump-sum awards.

If a court order acceptable for processing awards a former spouse a lump-sum amount from the employee annuity and does not state the monthly rate at which OPM should pay the lump-sum, OPM will pay the former spouse equal monthly installments at 50 percent of the gross annuity (subject to the limitations under § 838.211) at the time

of retirement or the date of the order, whichever comes later, until the lump-sum amount is paid.

§ 838.236 Court orders barring payment of annuities.

(a) State courts lack authority to prevent OPM from paying employee annuities as required by section 8345(a) or section 8463 of title 5, United States Code. OPM will not honor court orders directing that OPM delay or otherwise not pay employee annuities at the time or in the amount required by statute.

(b) Except as otherwise provided in this subpart, OPM will honor court orders acceptable for processing that direct OPM to pay the employee annuity to the court, an officer of the court acting as a fiduciary, or a State or local government agency during the pendency of a divorce or legal separation proceeding.

§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a court order acceptable for processing or an amended court order acceptable for processing that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

Procedures for Computing the Amount Payable

§ 838.241 Cost-of-living adjustments.

Unless otherwise provided in the court order, when the terms of the court order or § 838.621 provide for cost-of-living adjustments on the former spouse's payment from employee annuity, the cost-of-living adjustment will be effected at the same time and at the same percentage rate as the cost-of-living adjustment in the employee annuity.

§ 838.242 Computing lengths of service.

(a)(1) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(2) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

(b) Unused sick leave is counted as "creditable service" on the date of separation for an immediate CSRS annuity; it is not apportioned over the time when earned. Unused sick leave is not countable as "creditable service" in a FERS annuity (except in a CSRS component for an employee who transferred to FERS) or in a deferred CSRS annuity.

§ 838.243 Minimum amount of awards.

OPM will treat any court order that awards a former spouse a portion of an employee annuity equal to less than $12 per year as awarding the former spouse $1 per month.

Subpart C—Requirements for Court Orders Affecting Employee Annuities

§ 838.301 Purpose and scope.

This subpart regulates the requirements that a court order directed at employee annuity must meet to be a court order acceptable for processing.

§ 838.302 Language not acceptable for processing.

(a) *Qualifying Domestic Relations Orders.* (1) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must expressly—

(i) Refer to part 838 of title 5, Code of Federal Regulations, and

(ii) State that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirements of paragraph (a)(2) of this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶ 001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Benefits for the lifetime of the former spouse.* Any court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not a court order acceptable for processing.

§ 838.303 Expressly dividing employee annuity.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it expressly divides the employee annuity as provided in paragraph (b) of this section.

(b) To expressly divide employee annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of the employee annuity using terms that are sufficient to identify the employee annuity as explained in § 838.612.

§ 838.304 Providing for payment to the former spouse.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it provides for OPM to pay the former spouse a portion of an employee annuity as provided in paragraph (b) of this section.

(b) To provide for OPM to pay the former spouse a portion of an employee annuity as required by paragraph (a) of this section the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the retiree to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the employee annuity awarded to the former spouse.

(c) Except when the court order directed at employee annuity contains a provision described in paragraph (b)(2) of this section, a court order directed at employee annuity that instructs the retiree to pay a portion of the employee annuity to the former spouse is not a court order acceptable for processing.

(d) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that a court order directed at employee annuity provide for OPM to pay the former spouse, OPM strongly recommends that any court order directed at employee annuity expressly direct OPM to pay the former spouse directly.

§ 838.305 OPM computation of formulas.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information that OPM can compute the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, B, and F of this part, and information from normal OPM files.

(b)(1) To provide sufficient instructions and information for OPM to compute the amount of the former spouse's share of the employee annuity as required by paragraph (a) of this section the court order must state the former spouse's share as—

(i) A fixed amount;

(ii) A percentage or a fraction of the employee annuity; or

(iii) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order directed at employee annuity or normal OPM files.

(2) Normal OPM files include information about—

(i) The dates of employment for all periods of creditable civilian and military service;

(ii) The rate of basic pay for all periods of creditable civilian service;

(iii) The annual rates of basic pay for each grade and step under the General Schedule since 1920;

(iv) The amount of premiums for basic and optional life insurance under the Federal Employees Group Life Insurance Program;

(v) The amount of the Government and the employee shares of premiums for any health insurance plan under the Federal Employees Health Benefits Program;

(vi) The standard Federal income tax withholding tables;

(vii) The amount of cost-of-living adjustments under section 8340 or section 8462 of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(viii) The amount of pay adjustments to the General Schedule under section 5303 (or section 5305 prior to November 5, 1990) of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(ix) The provision of law under which a retiree has retired; and

(x) Whether a retiree has elected to provide survivor benefits for a current spouse, former spouse, or a person with an insurable interest.

(c)(1) A court order directed at employee annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the employee annuity.

(2) A court order directed at employee annuity is not a court order acceptable for processing if it awards the former spouse a "community property" fraction, share, or percentage of the employee annuity and does not provide a formula by which OPM can compute the amount of the former spouse's share of the employee annuity from the face of the court order or from normal OPM files.

(d) A court order directed at employee annuity is not a court order acceptable for processing if the court order awards a portion of the "present value" of an annuity unless the amount of the "present value" is stated in the court order.

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

(1) A fixed amount or fixed annual amounts that are stated in the order;

(2) The rate of cost-of-living or salary adjustments as those terms are described in § 838.622;

(3) The percentage change in pay that the employee actually received excluding changes in grade and/or step; or

(4) The percentage change in either of the national indices used to compute cost-of-living or salary adjustments as those terms are described in § 838.622.

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are net annuity, gross annuity, or self-only annuity, which are defined in § 838.103. Unless the court order otherwise directs, OPM will apply the formula, percentage, or fraction to gross annuity. Section 838.625 contains information on other methods of describing these types of annuity.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

§ 838.401 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders that affect refunds of employee contributions under CSRS or FERS. OPM must comply with court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that—

(1) Award a portion of a refund of employee contributions to a former spouse; or

(2) If the requirements of §§ 838.431 and 838.505 are met, bar payment of a refund of employee contributions.

(b) This subpart prescribes—

(1) The circumstances that must occur before refunds of employee contributions are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of a refund of employee contributions based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart E of this part contains the rules that a court order directed at a refund of employee contributions must satisfy to be a court order acceptable for processing.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on a refund of employee contributions of a court order acceptable for processing.

Availability of Funds

§ 838.411 Amounts subject to court orders.

(a)(1) Refunds of employee contributions are subject to court orders acceptable for processing only if all of the conditions necessary for payment of

the refund of employee contributions to the separated employee have been met, including, but not limited to—

(i) Separation from a covered position in the Federal service;

(ii) Application for payment of the refund of employee contributions by the separated employee; and

(iii) Immediate entitlement to a refund of employee contributions.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at refunds of employee contributions.

(b) Payment under a court order may not exceed the amount of the refund of employee contributions.

Application and Processing Procedures

§ 838.421 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of a refund of employee contributions. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at a refund of employee contributions.

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or separated employee, such as his or her full name, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee or separated employee has not applied for a refund of employee contributions, the current mailing address of the employee or separated employee.

§ 838.422 Timeliness of application.

(a) Except as provided in § 838.431 and paragraph (b) of this section, a court order acceptable for processing that is directed at a refund of employee contributions is not effective unless OPM receives the documentation required by § 838.421 not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by § 838.2007(c) or § 843.208(b) of this chapter if the former spouse has indicated on that Statement that such a court order exists.

(b) If OPM receives a copy of a court order acceptable for processing that is directed at a refund of employee contributions but not all of the documentation required by § 838.421, OPM will notify the former spouse that OPM must receive the missing items within 15 days after the date of the notice or OPM cannot comply with the court order.

§ 838.423 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at a refund of employee contributions, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order;

(iii) Whether OPM has a record of unrefunded employee contributions on the employee;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of a refund of employee contributions; and

(vi) That, if the former spouse disagrees with the formula, the former spouse must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of the refund of employee contributions;

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) The failure of OPM to provide, or of the employee or separated employee or the former spouse to receive, the information specified in this section does not affect the validity of payment under the court order.

§ 838.424 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart E of this part.

§ 838.425 Contesting the validity of court orders.

(a) An employee or separated employee who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee or separated employee submits a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

Payment Procedures

§ 838.431 Correcting failures to provide required spousal notification.

The interests of a former spouse with a court order acceptable for processing that is directed at a refund of employee contributions who does not receive notice of an application for refund of employee contributions because the employee or separated employee submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(a) The former spouse files a court order acceptable for processing that affects or bars the refund of employee contributions with OPM no later than the last day of the second month before the payment of the refund; or

(b) The former spouse submits proof that—

(1) The evidence submitted by the employee was fraudulent; and

(2) Absent the fraud, the former spouse would have been able to submit

the necessary documentation required by § 838.421 within the time limit prescribed in § 838.422.

§ 838.432 Court orders barring payment of refunds.

A court order, notice, summons, or other document that attempts to restrain OPM from paying a refund of employee contributions is not effective unless it meets all the requirements of § 838.505 or part 581 of this chapter.

Procedures for Computing the Amount Payable

§ 838.441 Computing lengths of service.

(a) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(b) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

§ 838.501 Purpose and scope.

This subpart regulates the requirements that a court order directed at or barring a refund of employee contributions must meet to be a court order acceptable for processing.

(a) A court order is directed at a refund of employee contributions if it awards a former spouse a portion of a refund of employee contributions.

(b) A court order bars a refund of employee contributions if it prohibits payment of a refund of employee contributions to preserve a former spouse's court-awarded entitlement to a portion of an employee annuity or to a former spouse survivor annuity.

§ 838.502 Expressly dividing a refund of employee contributions.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it expressly awards a former spouse a portion of a refund of employee contributions as provided in paragraph (b) of this section.

(b) To expressly award a former spouse a portion of a refund of employee contributions as required by paragraph (a) of this section, the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of a refund of employee contributions using terms that are sufficient to identify the refund of employee contributions as explained in § 838.612.

§ 838.503 Providing for payment to the former spouse.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it provides for OPM to pay a portion of a refund of employee contributions to the former spouse as provided in paragraph (b) of this section.

(b) To provide for OPM to pay a portion of a refund of employee contributions to the former spouse as required by paragraph (a) of this section, the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the employee or separated employee to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the refund of employee contributions awarded to the former spouse.

(c) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that the court order provide for OPM to pay the former spouse, OPM strongly recommends that the court order expressly direct OPM to pay the former spouse directly.

§ 838.504 OPM computation of formulas.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can compute the amount of the former spouse's share of the refund of employee contributions using only the express language of the court order, subparts A, D, and F of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information that OPM can compute the amount of the former spouse's share of the refund of employee contributions as required by paragraph (a) of this section requires that the court order state the former spouse's share as—

(1) A fixed amount;

(2) A percentage or a fraction of the refund of employee contributions; or

(3) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order directed at a refund of employee contributions is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the refund of employee contributions.

§ 838.505 Barring payment of refunds

A court order barring payment of a refund of employee contributions is not a court order acceptable for processing unless—

(a) It expressly directs OPM not to pay a refund of employee contributions;

(b) It awards, or a prior court order acceptable for processing has awarded, the former spouse a former spouse survivor annuity or a portion of the employee annuity; and

(c) Payment of the refund of employee contributions would prevent payment to the former spouse under the court order described in paragraph (b) of this section.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

§ 838.601 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award benefits in a court order directed at an employee annuity or a refund of employee contributions. OPM applies the meanings to determine whether a court order directed at an employee annuity or a refund of employee contributions is a court order acceptable for processing and to establish the amount of the former spouse's share of an employee annuity or a refund of employee contributions.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse a portion of an employee annuity or a refund of employee contributions.

(2) This subpart informs the legal community about the definitions to apply terms used in drafting court orders so that the resulting court orders contain the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse's share of an employee annuity or a refund of employee contributions.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court

order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

Identification of Benefits

§ 838.611 Identifying the retirement system.

(a) To satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1), a court order must contain language identifying the retirement system to be affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" benefits, or benefits payable "based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits or Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse a portion of an employee annuity or a refund of employee contributions under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order using "annuities," "pensions," "retirement benefits," or similar terms satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) and may be used to divide an employee annuity and a refund of employee contributions.

(b)(1) A court order using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity at the time of retirement or the date of the court order, whichever comes later, until the specific dollar amount is reached.

Computation of Benefits

§ 838.621 Prorata share.

(a) *Prorata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a prorata share of an employee annuity or a refund of employee contributions by using the term "prorata share" and identifying the date when the marriage began satisfies the requirements of §§ 838.305 and 838.504 and awards the former spouse a prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's retirement awards the former spouse a prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of an annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a prorata share as defined in paragraph (a) of this section.

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "cost-of-living adjustments" or "COLA's" occurring after the date of the decree but before the date of retirement provides increases equal to the adjustments described in or effected under section 8340 or section 8462 of title 5, United States Code.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree provides increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

(b)(1) Unless the court order directly and unequivocally orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula provides that the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes as a result of—

(i) Salary adjustments occurring after the date of the decree and before the employee retires; and

(ii) Cost-of-living adjustments occurring after the date of the decree and after the date of the employee's retirement.

(2) A court order that awards a former spouse a specific dollar amount from the employee annuity prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

(c)(1)(i) Except as provided in paragraph (b) of this section, a court order that contains a general instruction to calculate the former spouse's share effective at the time of divorce or separation entitles the former spouse to the benefit of salary adjustments occurring after the specified date to the same extent as the employee.

(ii) To prevent the application of salary adjustments after the date of the divorce or separation, the court order must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply salary adjustments after the specified date in computing the former spouse's share of the employee annuity.

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity provides that the former spouse is entitled to the application of cost-of-living adjustments after the date of the employee's retirement in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee's retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date of the employee's retirement.

(iii) To prevent the application of cost-of-living adjustments that occur after the employee annuity begins to accrue to

the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply cost-of-living adjustments occurring after the date of the employee's retirement.

§ 838.623 Computing lengths of service.

(a) Sections 838.242 and 838.441 contain information on how OPM calculates lengths of service.

(b) Unless the court order otherwise expressly directs—

(1) For the purpose of describing a period of time to be excluded from any element of a computation, the term "military service" means military service as defined in section 8331(13) of title 5, United States Code, and does not include civilian service with the Department of Defense or the Coast Guard; and

(2) For the purpose of describing a period of time to be included in any element of a computation, the term "military service" means all periods of military and civilian service performed with the Department of Defense or the Coast Guard.

(c)(1) When a court order contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," "service performed," or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order contains a formula for dividing employee annuity that requires a computation of "creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation (involving a CSRS employee annuity or the CSRS component of a FERS employee annuity) as follows:

(i) If the amount of unused sick leave is specified, the court order awards a portion of the employee annuity equal to the monthly employee annuity at retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified plus the number of months of unused sick leave specified (which sum is rounded to eliminate partial months) and whose denominator is the months of "creditable service" used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the court order awards a portion of the employee annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified (no sick leave included) and whose denominator is the number of months of "creditable service" used in the retirement computation (sick leave included).

(d)(1) General language such as "benefits earned as an employee with the U.S. Postal Service * * *" provides only that CSRS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits to a particular period of employment, the court order must—

(i) Use language expressly limiting the period of service to be included in the computation (e.g., "only U.S. Postal Service" or "exclusive of any service other than U.S. Postal Service employment"); or

(ii) Specify the number of months to be included in the computation; or

(iii) Describe specifically the period of service to be included in the computation (e.g., "only service performed during the period Petitioner and Defendant were married" or "benefits based on service performed through the date of divorce").

§ 838.624 Distinguishing between formulas and fixed amounts.

(a) A court order that contains both a formula or percentage instruction and a dollar amount is deemed to include the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction controls.

(b) A court order that awards a portion of the "present value" of an employee annuity and specifically states the amount of either the "present value" of the employee annuity or of the award is deemed to give the former spouse "a specific dollar amount" that is payable from a monthly employee annuity and will be paid as a lump-sum award in accordance with § 838.235.

§ 838.625 Types of annuity.

(a) Terms that are synonymous with net annuity are—

(1) Disposable annuity; and

(2) Retirement check.

(b) Terms that are synonymous with self-only annuity are—

(1) Life rate annuity;

(2) Unreduced annuity; and

(3) Annuity without survivor benefit.

(c) All court orders that do not specify net annuity or self-only annuity apply to gross annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

This appendix provides recommended language for use in court orders attempting to divide employee annuity. A court order directed at employee annuity should include five elements:

- Identification of the benefits;
- Instructions that OPM pay the former spouse;
- A method for computing the amount of the former spouse's benefit;
- Identification of the type of annuity to which to apply a fraction, percentage or formula; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

The court order may also include instructions for disposition of the former spouse's share if the former spouse dies before the employee. By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language in this appendix does not award a benefit that is payable after the death of the employee. A separate, distinct award of a former spouse survivor annuity is necessary to award a former spouse a benefit that is payable after the death of the employee. Appendix A to subpart I of this part contains model language for awarding survivor annuities and contains some examples that award both a portion of an employee annuity and a survivor annuity.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse's portion of an employee annuity and "[employee]" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "[former spouse]" and "[employee]."

Similarly, the models are drafted for employees covered by the Civil Service Retirement System. The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System.

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¶ 001 Language required in Qualified Domestic Relations Orders.

Using the following paragraph will expressly state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part. A court order directed at employee annuity (or awarding a survivor annuity) that is labelled a "Qualified Domestic Relations Order" or is issued on an ERISA form will not be automatically rendered unacceptable under § 838.302(a) or § 838.803(a) if the court order contains the following paragraph.

"The court has considered the requirements and standard terminology provided in part 838 of Title 5, Code of Federal Regulations. The terminology used in the provisions of this order that concern benefits under the Civil Service Retirement System are governed by the standard conventions established in that part."

100 Series—Identification of the benefits and instructions that OPM pay the former spouse.

¶ 101 Identifying retirement benefits and directing OPM to pay the former spouse.

Using the following paragraph will expressly divide employee annuity to satisfy the requirements of § 838.303 and direct OPM to pay the former spouse a share of an employee annuity to satisfy the requirements of § 838.304.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from 200 series of this appendix.] The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 102–110 [Reserved].

¶ 111 Protecting a former spouse entitled to military retired pay.

Using the following paragraph will protect the former spouse interest in military retired pay in the event that the employee waives the military retired pay to allow crediting the military service under CSRS or FERS. The paragraph should be used only if the former spouse is awarded a portion of the military retired pay. "If [Employee] waives military retired pay to credit military service under the Civil Service Retirement System, [insert language for computing the former spouse's share from 200 series of this appendix]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

200 Series—Computing the amount of the former spouse's benefits.

Paragraphs 201 through 204 contain model language for the most common types of wards that court orders make to former spouses. Subsequent paragraphs in the 200 series contain model language for less common, more complex awards.

Awards other than fixed amounts require that the court order specify the type of annuity ("gross," "net," or self-only) on which the award is computed. The types of annuity are defined in § 838.103. Variations on type of annuity are covered by the 300 series of this appendix.

¶ 201 Award of a fixed monthly amount.

Using the following paragraph will award the former spouse a fixed monthly amount. OPM will not apply COLA's to a fixed monthly amount unless the court order expressly directs that OPM and COLA's using the language in ¶ 231 of this appendix or similar language.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 202 Award of a percentage.

Using the following paragraph will award the former spouse a stated percentage of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert a number] percent of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 203 Award of a fraction

Using the following paragraph will award the former spouse a stated fraction of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert fraction] ths of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 204 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the employee annuity. Prorata share is defined in § 838.621. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 205–210 [Reserved].

¶ 211 Award based on a stated formula.

Using the following paragraphs will award the former spouse a share of the employee annuity based on a formula stated in the court order. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to apply the formula unless the necessary data is contained in normal OPM files.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System to be computed as follows: [Insert formula for computing the former spouse's share.]"

"The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 212–230 [Reserved].

¶ 231 Awarding COLA's on fixed monthly amounts.

Using the following paragraph will award COLA's in addition to a fixed monthly amount to the former spouse. The model awards COLA's at the same rate applied to the employee annuity.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. When COLA's are applied to [employee]'s retirement benefits, the same COLA applies to [former spouse]'s share. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or prorata share of the employee annuity, rather than a fixed dollar amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶ 202, ¶ 203, ¶ 204, or ¶ 211 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires' if the employee has not retired, or 'of this order' if the employee is already retired] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

300 Series—Type of annuity.

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the "gross," "net," or self-only annuity as defined in § 838.103 in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from "gross," "net," or self-only annuity as defined in § 838.103.

¶ 301 Awards based on benefits actually paid.

The court order may include a formula that effectively uses the court's definition of net annuity rather than the one provided by § 838.103. For example, using the following paragraph will award the former spouse a prorata share of the employee annuity reduced only by the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s monthly annuity under the Civil Service Retirement System, where monthly annuity means the self-only annuity less the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 302–310 [Reserved].

¶ 311 Awards of earned annuity in cases where the actual annuity is based on disability.

Using the following paragraph will award a former spouse a prorata share of what the employee annuity would have been based on only the employee's actual service in cases where the actual employee annuity is based on disability. The paragraph also allows the court order to provide for the former spouse's share to begin when the employee reaches a stated age, using age 62 as an example. As with all other formulas the court order must specify whether the computation applies to "gross," "net," or self-only annuity. OPM will apply COLA's that occurred after the date of the disability retirement to the former spouse's share. The following paragraph should be used only for disability retirees under CSRS. Under FERS, section 8452 of title 5, United States Code, provides a formula for recomputation of disability annuities at age 62 to approximate an earned annuity. Therefore to award a portion of the "earned" benefit under FERS add the introductory phrase, "Starting when [employee] reaches age 62," to the paragraph describing how to compute the amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United State's

Government. Starting when [employee] reaches age 62, [former spouse] is entitled to a prorata share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System, where monthly annuity means the amount of [employee]'s monthly annuity computed as though [employee] had retired on an immediate, nondisability annuity on the commencing date of [employee]'s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem [employee] to have been age 62 at the time that [employee] retired on disability. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

400 Series—Refunds of employee contributions.

Court orders that award a former spouse a portion of a future employee annuity of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee separates before becoming eligible to retire and requests a refund of employee contributions. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶ 401 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a portion of the employee annuity. "The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

¶ 402 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The sentence on the beginning date of the marriage is unnecessary if the beginning is stated elsewhere in the order. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. Note that a refund of employee contributions voids the employee's rights to an employee annuity and the former spouse's right to any portion of that annuity.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

500 Series—Death of the former spouse.

¶ 501 Full annuity restored to the retiree.

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, OPM will pay the former spouse's share to the retiree after the death of the former spouse.

¶ 502 Former spouse share paid to children.

Using the following paragraph will award the former spouse's share of an employee annuity to the children, including any adopted children, of the employee and former spouse.

"If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to surviving children of the marriage including any adopted children, in equal shares. Upon the deaths of any child, that child's share will be distributed among the other surviving children."

The language may be modified to terminate the payments to the children when they reach a stated age. A court order that includes such a provision for termination must include sufficient information (such as the children's dates of birth) to permit OPM to determine when the children's interest terminate. OPM will not consider evidence outside the court order (and normal OPM files) to establish the children's dates of birth.

¶ 503 Former spouse share paid to the court.

Using the following paragraph will provide for payment of the former spouse's share of an employee annuity to the court after the death of the former spouse. This would allow a court officer to administer the funds. "If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to this court at the following address: "[Insert address where checks should be sent. The address may be up to six lines and should include sufficient information for court officials to credit the correct account.]"

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.701 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders awarding former spouse survivor annuities under CSRS or FERS (including the FERS basic employee death benefit as defined in § 843.602 of this chapter). OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award former spouse survivor annuities.

(b) This subpart prescribes—

(1) The commencing and terminating dates of former spouse survivor annuities based on court orders acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a former spouse survivor annuity based on a court order under section 8341(h) or section 8445 of title 5, United States Code.

(c)(1) Subpart H of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to award a former spouse survivor annuity.

(2) Subpart I of this part contains definitions that OPM uses to determine the effect of a court order in connection with a former spouse survivor annuity.

Limitations on Survivor Annuities

§ 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payments under a court order may not exceed the amount provided in § 831.614 of this chapter.

(b) Under FERS, payments under a court order may not exceed amount provided in § 842.613 of this chapter plus the basic employee death benefit as defined in § 843.102 of this chapter.

Application and Processing Procedures

§ 838.721 Application requirements.

(a)(1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

(i) A certified copy of the court order;

(ii) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(iii) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(iv) The current mailing address of the former spouse;

(v) If the employee has not retired or died, the mailing address of the employee; and

(vi) A statement in the form prescribed by OPM certifying—

(A) That the former spouse has not remarried before age 55;

(B) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage before age 55; and

(C) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage before age 55.

(2) OPM may subsequently require recertification of the statements required by this paragraph.

§ 838.722 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity based on the service of a living retiree, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order; and

(iii) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the monthly benefit; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) Of the amount and commencing date of the reduction in the retiree's annuity;

(v) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the amount of the former spouse survivor annuity; and

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(b) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity, but the employee, separated employee, or retiree has died, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit will begin to accrue, and if known the date on which OPM will commence payment under the court order; and

(iii) Of the amount on the monthly former spouse survivor annuity and the formula OPM used to compute the former spouse survivor annuity.

(2) Anyone whom OPM knows will be adversely affected by the court order—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) How the court order may adversely affect him or her; and

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(c) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity and the employee or separated employee has not retired or died, OPM will attempt to inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before the employee or separated employee retires or dies; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and the OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iv) That, if he or she—

(A) Contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; or

(B) Disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before he or she retires or dies.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the former spouse's entitlement as determined under § 838.731.

§ 838.723 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart H of this part.

§ 838.724 Contesting the validity of court orders.

(a) An employee, retiree or person adversely affected by a court order who alleges that a court order is invalid must prove the invalidity of the court order by submitting to OPM a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee, separated employee, retiree, or person adversely

affected by the court order submits to OPM a court order described in paragraph (a) of this section or, if issued before the retirement or death of the employee or separated employee, a court order acceptable for processing amending or superseding the court order submitted by the former spouse.

§ 838.725 Effect on employee and retiree election rights.

(a) A court order acceptable for processing that awards a former spouse survivor annuity does not affect a retiring employee's or retiree's rights and obligations to make survivor elections under subpart F of part 831 of this chapter or subpart F of part 842 of this chapter.

(b) A court order acceptable for processing that awards a former spouse survivor annuity requires OPM to pay a former spouse survivor annuity and prevents OPM from paying an elected survivor benefit to a widow or widower or another former spouse if the election is inconsistent with the court order.

Payment Procedures

§ 838.731 Commencing date of payments.

(a) A former spouse survivor annuity based on a court order acceptable for processing begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(1) The first day after the date of death of the employee, separated employee, or retiree; or

(2) The first day of the second month after OPM receives a copy of the court order acceptable for processing.

(b) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

§ 838.732 Termination of entitlement.

(a) A former spouse survivor annuity (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) or the right to a future former spouse survivor annuity based on a court order acceptable for processing terminates in accordance with the terms of the court order but no later than the last day of the month before the former spouse remarries before age 55 or dies.

(b) If the employee dies before the former spouse remarries before age 55 or dies, the former spouse's entitlement to the FERS basic employee death benefit as defined in § 843.602 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

§ 838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.

(a) If a former spouse of a retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing while the retiree is living and—

(1) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will continue the reduction to comply with court orders in the order specified in § 838.135;

(2) If paragraph (a)(1) of this section does not obligate the entire entitlement lost by he former spouse, OPM will continue the reduction to provide a current spouse survivor annuity or a former spouse survivor annuity based on a timely-filed election under § 831.604, § 831.605, § 831.612, § 831.613, § 842.603, § 842.604, § 842.611, or § 842.612 of this chapter; or

(3) If paragraphs (a)(1) and (a)(2) of this section do not obligate the entire entitlement lost by the former spouse, the retiree (except a retiree under CSRS who retired before May 7, 1985 and who remarried before February 27, 1986) may elect within 2 years after the former spouse loses entitlement to continue the reduction to provide a survivor annuity for a spouse acquired after retirement.

(b)(1) If a former spouse of an employee or retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing after the death of the employee or retiree and—

(i) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will pay the next entitled former spouse in the order specified in § 838.135; or

(ii) If paragraph (b)(1) of this section does not obligate the entire entitlement lost by the former spouse, OPM will pay the balance to a current spouse of the deceased—

(A) Retiree who had elected a reduced annuity to provide a current spouse annuity (as defined in § 831.603 or § 842.602); or

(B) Employee.

(2) Except as provided in § 838.734—

(i) The former spouse survivor annuity based on paragraph (b)(1)(i) of this section begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(A) The first day of the month in which the former spouse with the earlier-issued court order loses entitlement; or

(B) The first day of the second month after OPM receives a copy of the court order acceptable for processing; or

(ii) The current spouse annuity under paragraph (b)(1) (ii) of this section begins to accrue on the first day of the month in which the former spouse loses entitlement.

(c) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

§ 838.734 Payment of lump-sum awards by survivor annuity.

OPM will not honor court orders awarding lump-sum payments (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) to a former spouse upon the death of an employee or retiree.

§ 838.735 Cost-of-living adjustments.

(a) OPM applies cost-of-living adjustments to all former spouse survivor annuities in pay status at the time of the adjustment and in the amount provided by Federal statute.

(b) OPM will not honor provisions of a court order that alters the time or amount of cost-of-living adjustments or that attempts to prevent OPM from applying cost-of-living adjustments to a former spouse survivor annuity in pay status.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

§ 838.801 Purpose and scope.

This subpart regulates the requirements that a court order awarding a former spouse survivor annuity must meet to be a court order acceptable for processing.

§ 838.802 CSRS limitations.

(a) A court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the marriage terminated on or after May 7, 1985.

(b) In the case of a retiree who retired under CSRS before May 7, 1985, a court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the retiree was receiving a reduced annuity to provide a survivor annuity to benefit that spouse on May 7, 1985.

§ 838.803 Language not acceptable for processing.

(a) *Qualifying Domestic Relations Orders.* (1) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the

provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must—

(i) Expressly refer to part 838 of Title 5, Code of Federal Regulations, and

(ii) Expressly state that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirement of paragraph (a) (2) of this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Employee annuity cannot continue after the death of the retiree.* Any court order that provides that the former spouse's portion of the employee annuity shall continue after the death of the employee or retiree, by using language such as "will continue to receive benefits after the death of" the employee, that the former spouse "will continue to receive benefits for his (or her) lifetime," or "that benefits will continue after the death of" the employee, but does not use terms such as "survivor annuity," "death benefits," "former spouse annuity," or similar terms is not a court order acceptable for processing.

§ 838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it expressly awards a former spouse survivor annuity or expressly directs an employee or retiree to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.

(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.911; and

(2) (i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912.

§ 838.805 OPM computation of formulas in computing the designated base.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can determine the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, G and I of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information for OPM to compute the amount of a former spouse survivor annuity as required by paragraph (a) of this section, if the court order uses a formula to determine the former spouse survivor annuity, it must not use any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse survivor annuity.

§ 838.806 Amended court orders.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if it is issued after the date of retirement or death of the employee and modifies or replaces the first order dividing the marital property of the employee or retiree and the former spouse.

(b) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse survivor annuity, the court order must be—

(1) Issued on a day prior to the date of retirement or date of death of the employee; or

(2) The first order dividing the marital property of the retiree and the former spouse.

(c) A court order that awards a former spouse survivor annuity and that is issued after the first order dividing the marital property of the retiree and the former spouse has been vacated, set aside, or otherwise declared invalid is not a court order acceptable for processing if—

(1) It is issued after the date of retirement of death of the retiree;

(2) It changes any provision concerning a former spouse survivor annuity in the court order that was vacated, set aside or otherwise declared invalid; and

(3)(i) The court order is effective prior to the date when it is issued; or

(ii) The retiree and former spouse do not compensate the Civil Service Retirement and Disability Fund for any uncollected annuity reduction due as a result of the court order vacating, setting aside, or otherwise invalidating the first order terminating the marital relationship between the retiree and the former spouse.

(d) In this section, "date of retirement" means the later of—

(1) The date that the employee files an application for retirement; or

(2) The effective commencing date for the employee's annuity.

(e) In this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(f)(1) In this section, the "first order dividing the marital property of the retiree and the former spouse" means—

(i) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order); or

(ii) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.

(2) The first order dividing marital property does not include—

(i) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making

the amendment, explanation, clarification, or interpretation; or

(ii) Any court order issued under reserved jurisdiction or any other court order issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

§ 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from annuity paid by OPM. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) The amount of the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, may be paid—

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity; or

(2) By reduction of the employee annuity.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by section 8339(j)(4) or section 8419 of title, 5, United States Code, from the employee annuity.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.901 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award a former spouse survivor annuity in a court order, and for OPM to determine whether a court order awarding a former spouse survivor annuity is a court order acceptable for processing and the amount of the former spouse survivor annuity.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse survivor annuity.

(2) This subpart informs the legal community about the definition to be applied to terms used in court orders, to permit the resulting orders to be more carefully drafted, using the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse survivor annuity.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

Identification of Benefits

§ 838.911 Identifying the retirement system.

(a) To satisfy the requirements of § 838.804(b)(1), a court order must contain language identifying the retirement system affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" survivor benefits, or "survivor benefits payable based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.804(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of § 838.804(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to this entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of § 838.804(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse survivor annuity under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.804(b)(1).

(d) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(1), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

§ 838.912 Specifying an award of a former spouse survivor annuity.

(a) To satisfy the requirements of § 838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as "survivor annuity," "death benefits," "former spouse survivor annuity under 5 U.S.C. 8341(h)(1)," etc.

(b)(1) A court order that provides that the former spouse is to "continue as" or "be named as" the beneficiary of CSRS survivor benefits or similar language satisfies the requirements of § 838.804(b)(2).

(2) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(2), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

(c) Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Under CSRS, section 8341(h) of title 5, United States Code, provides for "former spouse survivor annuities" and section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages. The corresponding FERS provisions are sections 8445 and 8444, respectively.

(1) OPM will enforce court orders to provide section 8341(h) or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) or section 8445 annuity, the court order must use terms such as "former spouse survivor annuity," "section 8341(h) annuity," or "survivor annuity."

(2) OPM cannot enforce court orders to provide "insurable interest annuities" under section 8339(k) or section 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retirees may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the nonemployee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement or if another former spouse has already been awarded a section 8341(h) annuity. However, the court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM cannot enforce the court order. Language including the words "insurable interest" or referring to section 8339(k) or section 8444 does

not satisfy the requirements of § 838.804(b)(2).

(3) In court orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8341(h)," the section reference will control.

Computation of Benefit

§ 838.921 Determining the amount of a former spouse survivor annuity.

(a) A court order that contains no provision stating the amount of the former spouse survivor annuity provides the maximum former spouse survivor annuity permitted under § 831.614 or § 842.613 of this chapter and satisfies the requirements of § 838.805.

(b)(1) A court order that provides that "a former spouse will keep" or "an employee or retiree will maintain" the survivor annuity to which he or she was entitled at the time of the divorce satisfies the requirements of § 838.805 and provides a former spouse survivor annuity in the same proportion to the maximum survivor annuity under § 831.614 or § 842.613 of this chapter as the former spouse had at the time of divorce. For example, a former spouse of an employee would be entitled to a maximum survivor benefit; a former spouse of a retiree (who was married to the retiree at retirement and continuously until the divorce resulting in the court order) would be entitled to the survivor benefit elected at retirement.

(2) If, at the time of divorce, the employee covered by FERS had at least 18 months of civilian service creditable under FERS but less than 10 years of service creditable under FERS, a former spouse with a court order described in paragraph (b)(1) or paragraph (b)(2) of this section may be entitled to the basic employee death benefit as defined in § 843.602 of this chapter, but is not entitled to any other former spouse survivor annuity based on the court order.

(c)(1) A court order that awards a former spouse survivor annuity of less than $12 per year satisfies the requirements of § 838.805 and provides an initial rate of $1 per month plus all cost-of-living increases occurring after the later of—

(i) The date of the court order; or

(ii) The date when the employee retires.

(2) The reduction in the employee annuity will be computed as though the court order provided a former spouse survivor annuity of $1 per month.

(d)(1) A court order that awards a former spouse survivor annuity while authorizing the employee or retiree to elect a lesser former spouse survivor annuity upon the employee's or retiree's remarriage satisfies the requirements of § 838.805, and provides the former spouse survivor annuity at the rate initially provided in the court order but does not allow the employee or retiree to elect a lesser benefit for the former spouse.

(2) To provide full survivor annuity benefits to a former spouse while authorizing the employee or retiree to elect a lesser former spouse survivor annuity benefit in order to provide survivor annuity benefits for a subsequent spouse, the court order must provide for a reduction in the former spouse survivor annuity upon the employee's or retiree's election of survivor annuity benefits for a subsequent spouse.

(3) A reduction in the amount of survivor benefits provided to the former spouse does not satisfy the requirements of § 838.805 if it is contingent upon the employee's or annuitant's remarriage rather than his or her election of survivor annuity benefits for a subsequent spouse.

§ 838.922 Prorata share defined.

(a) *Prorata share* means the fraction of the maximum survivor annuity allowable under § 831.614 or § 842.613 of this chapter whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a "prorata share" of a survivor annuity by using that term and identifying the date when the marriage began satisfies the requirements of § 838.805 and awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of a survivor annuity, as of a specified date before the employee's retirement, awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of a survivor annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a former spouse survivor annuity equal to a prorata share as defined in paragraph (a) of this section.

§ 838.923 Cost-of-living adjustment before the death of a retiree.

A court order that awards a former spouse survivor annuity is deemed to order OPM to add to the survivor annuity rate cost-of-living adjustments that occur before the death of a retiree (in the same manner as these adjustments are applied to the survivor rate generally) unless the court order contains an instruction expressly directing OPM not to add these adjustments to the survivor annuity rate. (See § 838.735 for information concerning cost-of-living adjustments after the death of an employee or retiree.)

Miscellaneous Provisions

§ 838.931 Court orders that provide temporary awards of former spouse survivor annuities.

A provision in a court order that temporarily awards a former spouse survivor annuity satisfies the requirements of § 581.804(b)(2), but the temporary award becomes permanent on the date on which OPM is barred from honoring a modification of the court order (the date of retirement or death, or, in the case of a post-retirement divorce, the date of the initial court order), as provided in sections 8341(h)(4) and 8445(d) of title 5, United States Code.

§ 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.

(a) Except as provided in paragraph (b) of this section, a court order that gives the former spouse the right to elect a former spouse survivor annuity satisfies the requirements of § 838.8804(b)(2) and provides a former spouse survivor annuity in the amount otherwise provided by the court order.

(b) A former spouse who has been awarded a former spouse survivor annuity by a court order that gives the former spouse the right to elect a former spouse survivor annuity may irrevocably elect not to be eligible for a former spouse survivor annuity based on the court order.

(c) The former spouse may make the election under paragraph (b) of this section at any time after the issuance of the court order. An election under paragraph (b) of this section—

(1) Must be in writing and in the form prescribed by OPM;

(2) Is effective on the first day of the month following the month in which OPM received the election; and

(3) Is irrevocable once it has become effective.

(d) The reduction in an employee annuity based on a court order that gives the former spouse the right to elect a former spouse survivor annuity terminates on the last day of the month in which OPM receives the former spouse's election under paragraph (b) of this section.

§ 838.933 Payment of the cost of a former spouse survivor annuity.

(a) A court order that unequivocally awards a former spouse survivor annuity and directs the former spouse to pay for that benefit satisfies the requirements of § 838.805, and—

(1) If the former spouse has also been awarded a portion of the employee annuity then the cost of the survivor benefit will be deducted from the former spouse's share of the employee annuity (if sufficient to cover the total cost—there will be no partial withholding); otherwise,

(2) The reduction will be taken from the employee annuity and collection from the former spouse will be a private matter between the parties.

(b) a court order that conditions the award of a former spouse survivor annuity on the former spouse's payment of the cost of the benefit satisfies the requirements of § 838.805 only if a court order acceptable for processing also awards the former spouse a portion of the employee annuity sufficient to cover the cost.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

This appendix provides recommended language for use in court orders awarding former spouse survivor annuities. A former spouse survivor annuity is not a continuation of a former spouse's share of an employee annuity after the death of the employee. A former spouse's entitlement to a portion of an employee annuity cannot continue after the death of the employee. A court order that attempts to extend the former spouse's entitlement to a portion of an employee annuity past the death of the employee is not effective. The model language in this appendix does not award benefits payable to the former spouse during the lifetime of the employee. A separate, distinct award of a portion of the employee annuity is necessary to award a former spouse a benefit during the lifetime of the employee. Appendix A to subpart F of this part contains model language for a portion of an employee annuity.

Attorneys should exercise great care in preparing provisions concerning former spouse survivor annuities because sections 8341(h)(4) and 8445(d) of title 5, United States Code, prohibit OPM from accepting modifications after the retirement or death of the employee. (See § 838.806 concerning unacceptable modifications.) A court order awarding a former spouse survivor annuity should include four elements:

- Identification of the retirement system;
- Explicit award of the former spouse survivor annuity.
- Method for computing the amount of the former spouse's benefit; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse survivor annuity and "[employee]" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "[former spouse]" and "[employee]."

Similarly, except when the provision applies only to the basic employee death benefit (defined in § 843.103 of this chapter) that is available only under the Federal Employees Retirement System, the models are drafted for employees covered by the Civil Service Retirement System (5 U.S.C. 8331 *et seq.*). The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System (5 U.S.C. chapter 84.).

Statutory references used in the models are to CSRS provisions (such as section 8341(h) of title 5, United States Code). When appropriate, the corresponding FERS provision (such as section 8445 of title 5, United States Code) should be used.

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Paragraphs 701 through 704 contain model language for awards of former spouse survivor annuities in amounts that do not require specification of the base on which the former spouse's share will be computed. Situations in which the computational base need not be specified include amounts defined by law or regulation. For example, the maximum former spouse survivor annuity is fixed by statute generally at 55 percent of the employee annuity under CSRS and 50 percent of the employee annuity under FERS.

Paragraphs 711 and 712 contain model language for awards of former spouse survivor annuities that use the employee annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Paragraphs 721 and 722 contain model language for awards of former spouse survivor annuities that use the maximum possible survivor annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Using the maximum possible survivor annuity as the base will generally award 55 percent under CSRS and 50 percent under FERS of the amount that using the employee annuity as the base would produce.

Paragraphs 750 and higher contain model language to implement the most common other types of awards.

Each model paragraph includes a reference to the statutory provision under CSRS that authorizes OPM to honor court orders awarding former spouse survivor annuities. The FERS statutory provision that corresponds to section 8341(h) (mentioned in the first

sentence of each example) is section 8445.

¶ 701 Award of the maximum survivor annuity.

Using the following paragraph will award the maximum possible former spouse survivor annuity. Under CSRS, the maximum possible survivor annuity is 55 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time. Under FERS, the maximum possible survivor annuity is 50 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System."

¶ 702 Award that continues the pre-divorce survivor annuity benefits.

Using the following paragraph will award a former spouse survivor annuity equal to the amount that the former spouse would have received if the marriage were never terminated by divorce.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System in the same amount to which [former spouse] would have been entitled if the divorce had not occurred."

¶ 703 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the maximum possible survivor annuity. Prorata share is defined in § 838.922. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorate share. The marriage began on [insert date]."

¶ 704 Award of a fixed monthly amount.

Using the following paragraph will award a former spouse survivor annuity that will start at the amount stated in the order when the employee or retiree dies, unless the stated amount exceeds the maximum possible former spouse survivor annuity. If the amount stated in the order exceeds the maximum possible former spouse survivor annuity, the court order will be treated as awarding the maximum. After payment of the former spouse survivor annuity has began, COLA's will be applied in accordance with § 838.735. If the final sentence of this model paragraph is omitted, OPM will add COLA's occurring after the date of the employee's retirement or the date of issuance of the court order, whichever is later.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to $[insert a number] per month. The Office of Personnel Management is ordered not to increase this amount by COLA's occurring before death of [employee or retiree]."

¶ 705–710 [Reserved].

¶ 711 Award of a percentage or fraction of the employee annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the employee annuity. The stated percentage or fraction may not exceed 55 percent under CSRS or 50 percent under FERS.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] percent of the [employee]'s employee annuity."

¶ 712 Award based on a stated formula as a share of employee annuity.

Using the following paragraphs will award a former spouse survivor annuity in an amount to be determined by applying a stated formula to employee annuity. The amount of the former spouse survivor annuity may not exceed 55 percent of the employee annuity under CSRS or 50 percent under FERS. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the [employee]'s employee annuity computed as follows:

"[Insert formula.]"

¶ 713–720 [Reserved].

¶ 721 Award of a percentage or fraction of the maximum survivor annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the maximum possible survivor annuity. The stated percentage or fraction may not exceed 100 percent.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] of the maximum possible survivor annuity.

¶ 722 Award based on a stated formula as a share of maximum survivor annuity.

Using the following paragraphs will award a former spouse survivor annuity based on a stated formula to be applied to the maximum possible survivor annuity. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the maximum possible survivor annuity computed as follows:

"[Insert formula.]"

¶ 723–750 [Reserved].

¶ 751 Changing amount of former spouse survivor annuity based on remarriage before retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries before retirement. Upon the employee's remarriage before retirement the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible

and prorata share are used as examples only; other amounts may be substituted. Similar language is not acceptable for remarriages after retirement.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] remarries before retirement. If [employee] remarries before retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data]."

¶ 752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries after retirement and elects to provide a survivor annuity for the spouse acquired after retirement. Upon the employee's remarriage after retirement and election to provide a survivor annuity for the spouse acquired after retirement, the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts maybe substituted. The change in the amount of the former spouse survivor annuity must be triggered by the election, which is a part of normal OPM files, rather than the remarriage, which is not documented in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] elects to provide a survivor annuity for a new spouse acquired after retirement. If [employee] elects to provide a survivor annuity to a new spouse acquired after retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data]."

¶ 800 Series—Paying the cost of a former spouse survivor annuity.

A court order awarding a former spouse survivor annuity requires that the employee annuity be reduced. The reduction lowers the gross employee annuity. The costs associated with providing the former spouse survivor annuity must be paid by annuity reduction. Under § 838.807, if the former spouse is awarded a portion of the employee annuity sufficient to pay the cost associated with providing the survivor annuity, the former spouse's share maybe reduced to pay the cost.

¶ 801 Costs to be paid from the employee annuity.

No special provision on payment of the costs associated with providing the former spouse survivor annuity is necessary if the court intends the cost to be taken from the employee annuity.

¶ 802 Costs to be paid from former spouse's share of the employee annuity.

Using the following paragraph will award the former spouse a prorata share of the employee annuity and a prorata share of the maximum possible survivor annuity and provide that the cost associated with the survivor annuity be deducted from the former spouse's share of the employee annuity. Prorata share and self-only annuity are used as examples only; another amount or type of annuity may be substituted.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s self-only monthly annuity under the Civil Service Retirement System. [Former spouse]'s share of [employee]'s employee annuity will be reduced by the amount of the costs associated with providing the former spouse survivor annuity awarded in the next paragraph. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share.

¶ 900 Series—Refunds of employee contributions.

Court orders that award a former spouse survivor annuity based on the service of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee requests a refund of employee contributions before becoming eligible to retire. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶ 901 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a former spouse survivor annuity. "The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

¶ 902 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The award of a prorata share is used only an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. A refund of employee contributions voids the employee's rights to an employee annuity unless the employee is reemployed under the retirement system. Payment of the refund of employee contributions will also extinguish the former spouse's right to a court-ordered portion of an employee annuity or a former spouse survivor annuity unless the employee is reemployed and reestablishes title to annuity benefits.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse.]"

2. Subpart Q of part 831 of this chapter consisting of sections 831.1701 through 831.1718 and appendices A and B is redesignated as subpart J of part 838, sections 838.1001 through 838.1018 and appendices A and B of subpart J, respectively. Subpart Q is reserved.

3. Newly redesignated § 838.1001 is removed and reserved; § 838.1010 is removed; and § 831.2009 of this chapter is redesignated as § 838.1010.

4. In newly redesignated § 838.1002, paragraphs (c) and (d) are revised to read as follows:

¶ 838.1002 Relation to other regulations.

* * * * *

(c) Subpart F of part 831 of this chapter, subpart F of part 842 of this chapter, and subpart C of part 843 of this

chapter contain information about entitlement to survivor annuities.

(d) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about entitlement to lump-sum death benefits.

* * * * *

5. In newly redesignated § 838.1004, paragraph (e) is revised to read as follows:

¶ 838.1004 Qualifying court orders.

* * * * *

(e)((1) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order dividing the marital property of the retiree and the former spouse.

(2) In paragraph (e)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(4)(i) In paragraph (e)(1)(ii) of this section, the "first order dividing the marital property of the retiree and the former spouse" means—

(A) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order; or

(B) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.

(ii) The first order dividing marital property does not include—

(A) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making the amendment, explanation, clarification, or interpretation; or

(B) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

6. Newly redesignated § 838.1012 is revised to read as follows:

§ 838.1012 Death of the former spouse.

(a) Unless the qualifying court order expressly provides otherwise, the former spouse's share of employee retirement benefits terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee retirement benefits reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a qualifying court order or an amended qualifying court order that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

§§ 831.603, 831.620, 831.624, 838.1003, 838.1004, 838.1006, 838.1007, 838.1009, 838.1010, 838.1011, 838.1016, 841.110, 841.804, 842.602, 842.615, 890.808, Appendix A to Subpart J of Part 838, Appendix B to Subpart J of Part 838 [Amended]

7. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
831.603	"Net annuity"	831.1703	838.103 of this chapter.
831.620	(b)(2)(ii)	831.1705	838.721 or § 838.1005 of this chapter.
831.624	(b)	831.1703	838.103 of this chapter.
831.624	(c)	831.1703	838.103 of this chapter.
838.1003	"Qualifying court order".	831.1704	838.1004.
838.1004	(c)(1)(i)	831.1709	838.1009.
838.1004	(c)(1)(ii)	831.1708	838.1008.
838.1006	(b)	831.1708	838.1008.
838.1006	(d)(2)	831.1705	838.1005.
838.1007	(a)(1)	831.1705	838.1005.
838.1007	(a)(1)	831.1706	838.1006.
838.1007	(a)(2)	831.1705	838.1005.
838.1007	(a)(2)	831.1704	838.1004.
838.1007	(a)(3)	831.1705	838.1005.
838.1007	(a)(3)	831.1706	838.1006.
838.1007	(a)(3)	831.1704	838.1004.
838.1007	(b)	831.1708	838.1008.
838.1009	(a)(1)	831.1708	838.1008.
838.1009	(b)	831.1706	838.1006.
838.1010	(e)	831.1705	838.1005.
838.1010	(f)(2)(ii)	831.1705	838.1005.
838.1011	(a)(3)	831.1705	838.1005.
838.1011	(b)(2)(ii)	831.1705	838.1005.
838.1016	(a)	831.1706	838.1006.
Appendix A to Subpart J	I. A. 2.	5305	5303.
Appendix A to Subpart J	I. C. 1.	831.1704(b)	838.1004(b).
Appendix A to Subpart J	I. F.	Subpart Q of Part 831	subpart J of part 838.
Appendix A to Subpart J	II. C.	831.1703	838.1003.
Appendix A to Subpart J	II. E.	831.1703	838.1003.
Appendix A to Subpart J	V. D.	831.1704(b)	838.1004(b).
Appendix A to Subpart J	VI. B.	831.1704(b)	838.1004(b).
Appendix B to Subpart J	III. G.	831.1704(b)	838.1004(b).

Section	Paragraph	Remove	Add
841.110	(f)	Subpart I of this part	part 838 of this chapter.
841.804		841.905(b)	838.111(c) of this chapter.
842.602	"Net annuity"	841.902	838.103 of this chapter.
842.615	(b)	841.902	838.103 of this chapter.
890.808	(c)	831.1704	part 838 of this chapter.

§§ 838.1002, 838.1003, 838.1006, 838.1007, 838.1009, 838.1010, 838.1016, [Amended]

8. In the list below, for each section and paragraph indicated in the left two columns, add the words "of this chapter" after the section reference indicated in the third column where it appears in the paragraph:

Section	Paragraph	Section reference
838.1002	(b)	831.106.
838.1002	(g)	831.109.
838.1003	"Former spouse annuity".	831.603.
838.1006	(c)(3)	831.614.
838.1006	(d)(3)	831.607.
838.1007	(c)	831.109.
838.1009	(a)(2)	831.109.
838.1010	(e)(2)	831.2007(c).
838.1010	(g)(1)	831.603.
838.1016	(a)	831.614.

PART 831—RETIREMENT

Subpart F—Survivor Benefits

9. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

10. In § 831.603, the definition of "qualifying court order" is revised to read as follows:

§ 831.603 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

Subpart V—Alternative Forms of Annuity

11–12. In § 831.2203, paragraph (b) is revised to read as follows:

§ 831.2203 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or under a qualifying court order as defined in § 838.1003 of this chapter may not elect an alternative form of annuity.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

13. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Pub. L. 99–335; § 841.508 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart H—Waiver of Benefits

14. In § 841.802, the definition of "qualifying court order" is revised to read as follows:

§ 841.802 Definitions

* * * * *

Qualifying court order means a court order acceptable for processing as defined in § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter.

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

15. Subpart I of part 841 is removed and reserved.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

16. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart F—Survivor Elections

17. In § 842.602, the definition of "qualifying court order" is revised to read as follows:

§ 842.602 Definitions

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

Subpart G—Alternative Forms of Annuity

18. In § 842.703, paragraph (b) is revised to read as follows:

§ 842.703 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter

may not elect an alternative form of annuity.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

19. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

20. In § 843.102, the definition of "qualifying court order" is revised to read as follows:

§ 846.102 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

21. The authority citation for part 846 continues to read as follows:

Authority: 5 U.S.C. 8461(g); § 841.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335.

22. In § 846.102, the definitions of "former spouse" and "qualifying court order" are revised to read as follows:

§ 846.102 Definitions.

* * * * *

Former spouse means a former spouse as defined in § 838.103 or § 838.1003 of this chapter.

* * * * *

Qualifying court order means a court order acceptable for processing as defined in § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter.

* * * * *

23. In § 846.202, the first two sentences of paragraph (a) are revised to read as follows:

§ 846.202 Condition for making an election.

(a) An election under § 846.102 of this part may not become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under subpart F of part 831 of this chapter or part 838 of this chapter. As provided in section 301(d)(2)(A) of the FERS Act of 1986, this section applies only if OPM has been duly notified concerning any qualifying court order and has received the documentation required in § 838.211, § 838.721, or § 838.1005 of this chapter. * * *

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

24. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p., 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064.

25. Section 890.802 is revised to read as follows:

§ 890.802 Definition.

In this subpart, a *Qualifying court order* means a court order acceptable for processing as defined in § 838.103 of this chapter or qualifying court order as defined in § 838.1003 of this chapter.

26. In § 890.808(b)(1), the last sentence is revised to read as follows:

§ 890.808 Employing office responsibilities.

* * * * *

(b) * * *

(1) * * * A request for the retirement system's determination whether a court order is a qualifying court order for health benefits enrollment under this subpart must be accompanied by the documentation specified in § 838.221, § 838.721, or § 838.1005 of this chapter.

* * * * *

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federal register

Wednesday
July 29, 1992

Part IV

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—State Curriculum Frameworks for Mathematics and Science

AGENCY: Department of Education.

ACTION: Notice of Final Priority for Fiscal Years 1992 and 1993.

SUMMARY: The Secretary announces a priority for fiscal years 1992 and 1993 for projects that will assist in the development and implementation of State curriculum frameworks, kindergarten through grade 12 (K–12), together with new approaches to teacher education and certification appropriate to the frameworks.

The Secretary takes this action to focus Federal financial assistance on State curriculum frameworks as the starting point for systemic improvement in mathematics and science education.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Becky Wilt, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The Eisenhower National Program for Mathematics and Science Education supports projects of national significance in mathematics and science instruction at the elementary and secondary levels. One of the six National Education Goals calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the Goals calls for the creation of world-class national standards for student achievement in the five core subjects, including mathematics and science, and for a system of improved assessments tied to the standards.

The National Council on Education Standards and Testing (NCEST), a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of standards and improved assessments, issued its report in January 1992. The report called for the development of national standards and a national system of voluntary assessments as an urgently needed first step in reforming American education.

Standards for mathematics have been developed by the National Council of Teachers of Mathematics. Substantial progress in developing world-class standards in science has also been made under the leadership of such organizations as the National Science Teachers Association and the American Association for the Advancement of Science. The National Academy of Sciences began a project in the fall of 1991 to complete the development of standards for the sciences.

World-class standards that define what students should know and be able to do in the subject areas of math and science provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. They provide the guidelines for curriculum and course design at the district, school, and classroom levels.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. Engaging more and more States in this process will help to achieve national consensus on world-class standards for American students and will prepare the way for all students to reach these standards. States must participate as lead agents in the design of these and related activities because they bear central responsibility in matters of education, and are best placed to coordinate efforts to raise general standards, to disseminate curricular frameworks, to influence new directions in teacher education and professional development, and to establish appropriate criteria for teacher certification.

States, or States working with other entities of their own choice, may apply for funding to support a project in either math or science or both. But in every case, the development of a curricular framework must be accompanied by closely related plans for teacher education and certification as well as for professional development and recertification.

The Secretary notes that this priority is consistent with, and complementary to, the National Science Foundation's (NSF) Statewide Systemic Initiative. Whereas the NSF Initiative embraces a comprehensive array of approaches, this priority for the Eisenhower National Program directly focuses on the development of coherent, integrated K–12 curricula consistent with national standards, and on specified programs for teacher education and certification needed to implement those curricula.

On May 1, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 19014).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition in FY 1992 was published in the **Federal Register** on June 15, 1992 (57 FR 26756). A notice inviting applications under this priority in FY 1993 will be published in the **Federal Register** at a later date.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, eight parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: One commenter expressed concern that the priority did not state the goal of being first in the world in mathematics and science achievement.

Discussion: The supplementary information provided with the priority notice explains that the priority reflects the fourth National Education Goal, which states that by the year 2000 U.S. students should be first in the world in science and mathematics achievement. Further, this goal is discussed thoroughly in a number of publications concerning the AMERICA 2000 Educational Strategy. A reference in the priority itself is not necessary.

Changes: None.

Comments: The Secretary received a number of comments that suggested that the Department guard against what might appear to be an endorsement of any one organization's conception of national standards for mathematics or science education. One commenter expressed the view that the Department should not require funded projects to build mathematics frameworks upon standards developed by the National Council of Teachers of Mathematics (NCTM), but rather should allow grantees the option of basing frameworks on other nationally recognized standards for mathematics education. Another commenter recommended that the priority state that

documents prepared by the major curriculum reform movements in science education are draft documents that should not be used as standards in the development of a State framework. On the other hand, a commenter expressed surprise that the priority did not cite the *California Science Framework* as a model for other State frameworks.

Discussion: The Secretary believes that, as national standards for mathematics and science education reach final form and gain acceptance in that form, States should build their curriculum frameworks upon them. The NCTM standards are widely recognized as the national standards for mathematics and therefore the priority requires that applicants build upon these standards in developing frameworks.

The Secretary agrees that science standards are in the process of emerging and that grantees should not be required to build on each specific curriculum reform project named in the priority. However, the Secretary sees no need to refer to documents produced by those projects as drafts. The Secretary does not consider it appropriate to cite any one State's framework as a model for other States to follow.

Changes: The priority has been revised to allow grantees to build science curriculum frameworks upon science standards emerging from any of the major curriculum reform projects named in the priority, rather than require that the frameworks build upon all of these projects.

Comments: One commenter suggested that the priority acknowledge the importance of computer education in curriculum frameworks for mathematics and science education.

Discussion: The Secretary recognizes that technology is an integral part of instruction in mathematics and science. For example, the NCTM standards address the role of technology in math, and the Secretary expects that emerging science standards will also incorporate uses of technology. The Secretary presumes that each State will incorporate technology into its curriculum framework to the extent appropriate for the framework.

Changes: None.

Comments: One commenter recommended that States be allowed to develop assessment programs under the priority.

Discussion: While the Secretary concurs that there is a need for better assessments and would like to see more work on them, he views the development of curriculum frameworks based on standards as a necessary first step in systemic reform. The Secretary hopes to support assessment activities related to the frameworks in the future.

Changes: None.

Comments: One commenter thought that the priority did not provide opportunities for the business community to participate in the development of curriculum frameworks.

Discussion: The priority provides these opportunities. Section (d) of the priority states that each funded project must include representatives of business, labor, and industry among the members of the advisory committee.

Changes: None.

Comments: A commenter recommended that the priority's requirement that the frameworks serve all children be expanded to cite children with disabilities and gifted children specifically.

The commenter also suggested that the priority require that experienced educators of children with disabilities and gifted children be included among the developers of State frameworks, and that links between curriculum frameworks and teacher education and certification include preparation for teachers to instruct exceptional children.

Discussion: The priority is intentionally broad to be inclusive of all students. However, the Secretary agrees that this priority should ensure the involvement of educators with an expertise in working with students with disabilities.

Changes: The priority has been revised to require each grantee to include educators expert in working with students with disabilities on the advisory committee that guides the activities of the project.

Comments: A commenter expressed the view that efforts to develop new approaches to teacher education and certification should receive emphasis equal to that given the implementation of State curriculum frameworks.

Discussion: The Secretary believes that sections (b) and (c) of the proposed priority give serious and substantive attention to teacher education, certification, recertification, and professional development insofar as these activities relate to the development of curriculum frameworks.

Changes: None.

Comments: A commenter recommended that the Department require grantees to meet with other grantees so that persons developing curriculum frameworks in different States will have an opportunity to share their experience and avoid duplication of effort.

Discussion: All grantees of the Eisenhower National Program for Mathematics and Science Education are routinely required to attend the annual meeting held jointly by the National Program and the Eisenhower Mathematics and Science Education State Grant Program. This meeting will afford grantees working on curriculum frameworks the opportunity to meet with colleagues engaged in the same work in different States.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 755.12(c) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

State Curriculum Frameworks for Mathematics and Science Education

Projects in which States, or States in collaboration with other entities, carry out all the following activities:

(a) Develop a State curriculum framework, kindergarten through grade 12 (K–12), that reflects world-class standards and will be made available for local schools and districts to implement, or to adapt, for themselves. These frameworks must cover mathematics or science or both disciplines. The frameworks must embody coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. Frameworks must build upon nationally recognized mathematics standards developed by the National Council of Teachers of Mathematics and science standards emerging from major curriculum reform projects, such as the National Science Teachers Association's *Scope, Sequence, and Coordination* project, the American Association for the Advancement of Science's *Project 2061—Science for All Americans*, and the work of the Mathematical Sciences Education Board and the National Academy of Sciences. The design of these frameworks must involve college and university scholars and specialists as well as teachers and administrators from public or private schools working together as equal collaborators.

(b) Develop model guidelines for effective approaches to teacher education and certification based upon the world-class standards and the State curriculum framework tied to those world-class standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The collaborative work of

designing these model guidelines must also involve scholars and specialists, school teachers, and school administrators from public or private schools.

(c) Develop criteria for teacher recertification, and design and pilot test a model, cost-effective inservice professional development program for teachers based upon the world-class standards and the State curriculum framework tied to those standards. Again, the work of designing these programs must involve collaboration among scholars and specialists, school teachers, and school administrators from public or private schools. In addition, these programs must be pilot tested in a variety of schools throughout the State.

(d) Provide the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project, each project must establish an overall advisory committee that includes classroom teachers, educators with expertise in working with students with disabilities, university scholars in mathematics and science, State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, and State and local boards of education, and representatives of business, labor, industry, and the community at large.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR Part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: July 13, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–17848 Filed 7–28–92; 8:45 am]

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Wednesday,
July 29, 1992

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for Rental Voucher Program and Rental Certificate Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3472; FR-3155-N-01]

NOFA for Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1992 and procedures for allocating funds and approving IHA/PHA applications.

SUMMARY: The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice identifies the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for each HUD Field Office jurisdiction during Fiscal Year 1992. This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Applications must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., time at the office where the application is submitted) on August 28, 1992.

ADDRESSES: The basic application, Form HUD-52515, may be obtained from, and completed applications are to be submitted to, the appropriate HUD Field Office/Indian Program Office for the jurisdiction in which the applicant is located (see Section II, Application Process, of the NOFA). (Application forms are also attached to this NOFA.)

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-fee.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2502-0123.

I. Purpose and Substantive Description

A. Authority

The regulations governing the Rental Certificate Program and the Rental Voucher Program are published at 24 CFR parts 882 and 887. The regulations for allocation of housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

B. Allocation Amounts

(1) *Housing needs formula.* Approximately $2 billion of budget authority is available this fiscal year for the Rental Certificate and Rental Voucher Programs for incremental use. Of this amount, approximately $1.1 billion is for rental certificates and approximately $924 million is for rental vouchers. Budget authority of approximately $650 million ($460 million for rental certificates and $190 for rental vouchers) is being allocated to HUD Field Offices under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. This is in addition to the approximately $933 million of budget authority that was made available for rental vouchers and rental certificates in connection with the Family Self-Sufficiency Program under NOFAs published at 56 FR 49612 (September 30, 1991) and 57 FR 312 (January 3, 1992).

(2) *Metropolitan—nonmetropolitan mix.* Separate housing needs factors were developed for the metropolitan and nonmetropolitan portions of each Field Office jurisdiction. On a nationwide basis, approximately 17 percent of the Fiscal Year 1992 budget authority for the Rental Voucher Program and Rental Certificate Program incremental units is designated for nonmetropolitan areas. The nonmetropolitan housing needs factors were applied to the housing assistance budget authority available for use in nonmetropolitan areas, and the metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas.

The Department has determined that metropolitan areas and nonmetropolitan areas within each Field Office jurisdiction are the smallest practicable areas to which budget authority can be allocated. Given the limited amount of FY 1992 budget authority, it is not practicable to allocate budget authority to smaller allocation areas and still ensure that funding is sufficient to support feasible programs and meet the statutory obligation to provide sufficient resources for rental rehabilitation needs.

(3) *Program type.* Attachment 5 to this NOFA announces the allocation of housing assistance budget authority for the Rental Voucher and Rental Certificate Programs to each Field Office based on the housing needs factors. The allocation of housing assistance budget authority to each Field Office, however, is a total for both Programs, and represents an approximate 29 percent-Rental Voucher Program/71 percent-Rental Certificate Program mix. Field Offices are given flexibility to decide whether to approve Rental Certificates or Rental Vouchers for any HA application, regardless of which program the HA requested in its application, in order to use the budget authority allocated for each program.

This notice also provides, for each Field Office, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the Field Office. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction. The actual number of units assisted will vary from these estimates because of differences in the actual bedroom size mix, among other factors.

(4) *Potential additional funding.* In the event additional rental voucher or rental certificate funding becomes available for incremental use during Fiscal Year 1992, the Department plans to distribute any additional funding to Field Offices using the same percentage distribution as reflected in Attachment 5 to this NOFA. Any additional funding will be used to fund approvable HA applications under the competitive requirements in this NOFA.

c. Rental Rehabilitation Program Obligations

(1) For low-income families living in units rehabilitated under the Rental Rehabilitation Program (24 CFR part 511), section 8(u) of the United States Housing Act of 1937 provides that:

(a) Rental vouchers or rental certificates shall be made available for families who are required to move out of their units because of physical rehabilitation activities or because of overcrowding;

(b) At the discretion of the HA, rental vouchers or rental certificates may be made available for families who would have to pay more than 30 percent of

adjusted income for rent after rehabilitation whether they choose to remain in or move from the project; and

(c) HUD shall allocate rental certificates or rental vouchers to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of families living in rental rehabilitation projects.

(2) The HA application must specify the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects for which the HA does not have sufficient rental vouchers or rental certificates (using unissued or turnover rental vouchers or rental certificates).

(3) Field Office/Indian Program Office staff will rate and rank HA applications that request rental vouchers and/or rental certificates for families living in rental rehabilitation projects with all other HA applications.

(4) In determining the minimum number of rental vouchers or rental certificates to allocate to a HA, Field Office/Indian Programs Office staff must first determine the total number of rental vouchers and rental certificates needed during calendar year 1992 for families affected by rental rehabilitation activities (as described in paragraph (1) of this section I.C), and the number of rental vouchers and rental certificates that are already available to the HA without additional funding because rental vouchers or rental certificates are unissued or are expected to turn over. In reviewing the amount of assistance available to a HA for these families, the Field Office/Indian Programs Office staff must make certain that the HA has enough rental certificates for low-income families, but not very low-income families, that are affected by rental rehabilitation activities but are not eligible for rental vouchers.

(5) The Field Office/Indian Programs Office will determine the minimum amount of assistance to be provided to a HA during Fiscal Year 1992 as follows:

(a) The total number of eligible families affected by rental rehabilitation activities will be determined as follows:

(i) The Field Office/Indian Program Office will identify the rental rehabilitation projects to be completed by December 31, 1992 and identify the number of eligible families living in those projects that will be physically displaced (i.e., forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities) or whose rent would be more than 30 percent of income as a result of rental rehabilitation activities.

(ii) Families whose incomes are between 50 percent and 80 percent of median income and whose rent after rehabilitation would be more than 30 percent of their adjusted income, but that are not physically displaced, are ineligible for rental vouchers. Because rental certificates must be made available for these low-income families, the number of these families should be separately identified.

(b) From the total number of eligible families affected by rental rehabilitation activities, subtract:

(i) The number of rental vouchers and rental certificates under Annual Contributions Contract (ACC) but not issued to families (do not include in the number of rental vouchers and rental certificates under ACC any special allocations of rental vouchers and rental certificates that were provided by HUD to be used for special purposes such as opt-outs, public housing demolition or disposition, desegregation of public housing projects, or rental certificates approved by HUD for use in connection with project-based assistance);

(ii) The number of rental vouchers and rental certificates that are expected to turn over (i.e., those rental vouchers or rental certificates that are expected to be available for reissuance) in the HA jurisdiction during calendar year 1992; and

(iii) The number of rental certificates and rental vouchers reserved for the HA under the Family Self-Sufficiency Program incentive award NOFA.

(c) The remainder, computed in accordance with the above, equals the minimum number of rental vouchers or rental certificates that must be allocated to the HA during Fiscal Year 1992.

D. Eligibility

All HAs are invited by this notice to submit applications for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

E. Selection Criteria/Rating Factors

(1) *Selection Criterion 1: HA Administrative Capability (32 points)*—(a) *Description:* Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements. If a HA is not administering a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program. For purposes of this NOFA, a HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If a HA is not administering a Rental Certificate, Rental Voucher, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office/Indian Programs Office will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) *Rating: 16–32 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as excellent; there is no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Program Office inspection and also failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1991;

1–15 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and also failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for Public/Indian Housing units) under ACC for one year or more was at least 85 percent as of September 30, 1991;

0 points. If none of the above statements apply, assign 0 points.

(c) *Field Office/Indian Programs Office Assessment:* In assigning points for administrative capability for a State or regional HA application, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan areas and for nonmetropolitan areas and use the applicable rate to score points for administrative capability.

(2) *Selection Criterion 2: Underfunding of Housing Needs (25 points).*

(a) *Description:* The degree to which the housing needs of the area specified in the HA's application from which the HA draws families to assist (primary area) have previously been underfunded, relative to the needs of other localities within the allocation area, taking into account such factors as the number of assisted housing units and the number of very low-income renter households eligible for such assistance. The Field Office will, wherever practicable, consider needs being met by all federally assisted rental housing programs, including the FmHA Section 515 Rural Rental program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

In accordance with Notice PIH 91–45 (HUD), the Field Office will notify FmHA of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing projects, with which HUD agrees, will receive no points.

(b) *Rating and assessment:* The Field Office will evaluate whether housing needs in the primary area specified in the application have been underfunded with respect to assisted housing provided to other communities in the allocation area, and will assign one of three point-values, as follows:

25 points. Housing needs in the area(s) specified in the application have been severely underfunded.

12 points. Housing needs in the area(s) specified in the application have been moderately underfunded.

0 points. Housing needs in the area(s) specified in the application have received a proportionate share of funding or have been overfunded.

(3) *Selection Criterion 3: Homeless Program (20 points).*

(a) *Description:* The percentage of the units in the application that will be targeted to homeless families. Points will not be awarded under this criterion for HA efforts to assist families that are doubled up in another family's home or that are living in substandard housing.

(b) *Rating:* The Field Office/Indian Program Office will assign one of four point-values, as follows:

20 points. If 75–100% of the units being applied for will be used for the homeless.

15 points. If 50–74% of the units being applied for will be used for the homeless.

10 points. If 1–49% of the units being applied for will be used for the homeless.

0 points. None of the units being applied for will be used for the homeless.

(c) *Field Office/Indian Programs Office Assessment:* The Field Office/Office of Indian Programs shall evaluate the capacity of the HA to have a homeless program operational within six months of ACC execution. If the Field Office/Indian Programs Office determines that the HA does not have the capacity to coordinate the provision of supportive services (if applicable) and implement a homeless program of the size indicated in the HA application, up to one-half of the points assigned to the HA under this criterion may be deducted.

(4) *Selection Criterion 4: Local Initiatives (3 points)*—(a) *Description.* (i) Extent to which HAs provide families with greater housing opportunities (e.g., State or regional HAs, or local HAs participating in voluntary exchange programs and interjurisdictional mobility programs). (ii) Extent to which HAs demonstrate locally initiated efforts in support of their Rental Voucher and Rental Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) *Rating:* The Field Office/Indian Program Office will assign one of three point-values, as follows:

3 points: HA is a State or regional HA or local HA participating in voluntary mobility programs, and the State or locality provides local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.

2 points: HA provides broad housing choice, *or* the State or locality provides support to the HA's Rental Voucher or Rental Certificate Program.

0 points: HA does not provide broad housing choice, and the State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

F. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the Field Office/Indian Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III, Checklist of Application Submission Requirements, of this NOFA). The Field Office/Indian Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(c) HUD has denied application processing under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(d) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or Field Office/Indian Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(e) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent, or, in the case of a HA not currently administering a Rental

Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 75 percent. (For a State or regional HA, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan and nonmetropolitan areas, and shall use the applicable rate in determining whether to accept the application under this paragraph.)

(f) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

G. Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of local government. The Field Office/Indian Programs Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

Section 213 comments submitted by units of general local government that have approved Comprehensive Housing Affordability Strategies (CHASs) should address how the HA application for rental vouchers and/or rental certificates relates to the priorities for assistance identified in the local government's CHAS, and should include comments on the household types (i.e., elderly, family, large-family) that the HA proposes to serve.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

H. Funding Applications

(1) *Maximum funding allowed.* The Field Office/Office of Indian Programs may not approve funding for a HA under this NOFA for more than the greater of 10 percent of the HA rental voucher and rental certificate units under reservation or 50 units.

(2) *Minimum funding allowed.* The Field Office/Office of Indian Programs may not approve funding for a HA under this NOFA for less than 25 units, unless:

(i) The HA requests fewer than 25 units;

(ii) The application is being funded only to meet rental rehabilitation obligations; or

(iii) The residual budget authority after funding higher ranking applications is insufficient to fund at least 25 units.

(3) *Funding procedure.* The Field Office must develop a procedure for approval of applications (including applications rated by the Office of Indian Programs) in rank order until all the housing assistance budget authority is used. The Field Office may elect to approve 100 percent of the units requested in all top-ranked applications or some lower percentage of the units requested in all applications (including applications from IHAs) that score above a Field Office-determined funding cut-off, up to the maximum number of units allowed. If applications (including applications from IHAs) that score above a Field Office-determined funding cut-off are to be funded at less than 100 percent, the Field Office must apply the same percentage reduction to the number of units requested in each application.

Alternatively, the Field Office may divide approvable applications into two categories: Those scoring over 40 points, and those scoring 40 points or less. The Field Office may choose to apply different percentage reduction for each of the two ranking categories so that a higher percentage of units requested would be approved for all applications in the higher category and a lower percentage of units requested would be approved for all applications in the lower category. The Field Office must apply the same percentage reduction to each application within each of the two ranking categories.

Where a Field Office funds applications according to rank order, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be funded to the extent of the number of units available.

If a HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan area or nonmetropolitan area allocation, the Field Office will award the available form of assistance, even though not specifically requested by the applicant.

The Field Office must promptly notify the applicable Office of Indian Programs as to the status of any applications from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding.

(4) *Ensuring funding for families displaced from rental rehabilitation projects.* (a) When all applications have been rated and ranked, Field Offices must determine whether all applications with identified rental rehabilitation needs will be approved. If not, proposed funding for all higher ranked applications without rental rehabilitation needs must be reduced by the same percentage to provide funding for all identified rental rehabilitation needs in lower ranked applications. Thus, rental rehabilitation needs identified in applications that otherwise fall below the funding cut-off must be funded.

(b) The Field Office will make its determination under paragraph (a) of this subsection by identifying the number of units in each application needed for:

(i) Families that will be physically displaced from units to be rehabilitated under the Rental Rehabilitation Program; and

(ii) Families that would have to pay more than 30 percent of adjusted income for rent as a result of rental rehabilitation activities.

(c) In identifying the number of units under paragraph (b) of this subsection, the Field Office will compare the HA estimate and the Field Office/Indian Programs Office estimate developed in accordance with the procedures identified in section I.C(5) of this NOFA. The Field Office/Indian Programs Office estimate shall be used unless it is clearly incorrect.

I. Reallocations of Funds

Each Field Office shall make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one Field Office to another when the funds are not likely to be used in the Field Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(a) *Reallocations within the same state.* If the allocation of funds to a Field Office cannot be used within the Field

Office jurisdiction during Fiscal Year 1992, the Regional Office must, if possible, reallocate those funds to another Field Office within the same State where they can be used during Fiscal Year 1992. In making these reallocations, priority must be given to Field Offices where additional funds are needed for families affected by Rental Rehabilitation Program activities.

(b) *Reallocations between states.* If a Regional Office cannot use funds within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office. In approving such a reallocation, Headquarters must consider whether these funds are needed within the same Region or other Regions for families affected by Rental Rehabilitation Program activities.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the metropolitan/nonmetropolitan mix, and the amount to be reallocated subsequently to each State. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

(c) *Reallocations between metropolitan and nonmetropolitan areas.* The Regional Office must follow the original fund assignments for metropolitan and nonmetropolitan areas when it reallocates unused budget authority. If there are not enough approvable applications for the designated metropolitan or nonmetropolitan budget authority, the Regional Office may switch the budget authority between a metropolitan and a nonmetropolitan area within the same State, provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or nonmetropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, before switching budget authority between a metropolitan and a nonmetropolitan area.

J. Notification of Funds Awarded

(1) After the Field Offices have reviewed, rated, and ranked applications, and the Field Offices and Offices of Indian Programs have approved the applications, Regional Offices must submit to Headquarters a list of all approved applications, listed by Field Office. The Regional Office application approval list is due in Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The Regional Offices must provide the following information for each application approved:

(a) The name and address of the HA;

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA;

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates; and

(d) The number of rental vouchers and the number of rental certificates for each of the following: Rental rehabilitation, the homeless, and other purposes.

(3) Assistance provided under the Section 8 Existing Housing Program is generally categorically excluded from environmental assessment under the National Environmental Policy Act (42 U.S.C. 4332) (see 24 CFR 50.20(d)). However, where assistance provided under this NOFA is used by the HA for project-based certificate assistance under 24 CFR part 882, subpart G, HUD will perform an environmental review to the extent required be 24 CFR 882.713 before the HA enters into an agreement with the owner for the assistance.

K. Administrative Fees

(1) The administrative fees for units in Fiscal Year 1992 appropriations are specified as follows:

	Rental Vouchers	Rental Certificates
(a) FY 1992 Incremental (Fees Provided by FY 1992 Appropriation):		
(1) On-going	8.2%	8.2%
(2) Preliminary	$275	$275
(3) Hard-to-house	$45	$45
(b) FY 1992 Opt-outs/Public Housing Demolition (Replacements and Relocation):		
(1) On-going	6.5%	7.65%
(2) Preliminary	$215	$250
(3) Hard-to-house	$45	$45
(c) Renewal of Renal Vouchers and Rental Certificates:		
(1) On-going	6.5%	7.65
(2) Preliminary	$0	$0
(3) Hard-to-house	$45	$45

(2) For budget preparation, submission of requisitions, and approving year-end operating statements, HAs should use the August 3, 1990, Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given HA.

L. Headquarters Reserve

The Department is retaining approximately $68 million of the budget authority available for incremental rental vouchers and rental certificates in a Headquarters Reserve for use in connection with natural disasters, litigation, desegregation, and other housing emergencies, consistent with 24 CFR 791.407.

M. Other Allocations

In addition to the budget authority for incremental rental vouchers and rental certificates, $7.4 billion of additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1992 for rental vouchers and rental certificates for the following purposes:

(a) *Opt-Outs and prepayments.* Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should indicate whether rental vouchers, rental certificates, or both are needed, and should include all necessary data. Requests for funding to assist families living in Loan Management Set-Aside Projects as described in paragraph (a)(i) below must be consistent with section VIII(A) of HUD Notice H 91–60 (dated July 9, 1991), Instructions for Section 8 Loan Management Set-Aside Contract Renewals, to determine the amount of funds required. Funding under this category is to assist families that are adversely affected by an owner's decision to opt-out of a Section 8 contract or to prepay an FHA-insured mortgage, as follows:

(i) Families living in a Section 8 Loan Management Set-Aside (LMSA) Project where the Section 8 Housing Assistance Payments Contract ends.

(ii) Families living in a Section 8 New Construction, Substantial Rehabilitation, or Loan Management Set-Aside project, where the owner has sole discretion to, and does, "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract.

(iii) Families living in a section 236 or section 221(d)(3) Below Market Interest Rate project, where the owner prepays the mortgage.

(b) *Public housing demolition and disposition (relocation and replacement).* To assist families that are living in public housing projects that are being demolished or disposed of with HUD approval. Relocation assistance

may be provided in the form of 5-year rental voucher or rental certificate funding. Replacement housing may be provided in the form of 15-year funding for rental certificate assistance.

(c) *Rental certificate and rental voucher renewals.* Headquarters will allocate funds directly to the Field Offices to provide for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1992. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments).

(d) *Section 23 conversions.* Headquarters will allocate certificate funds directly to the Field Offices to provide tenant-based rental assistance to residents of section 23 leased housing for which leases are expiring or have been terminated. Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should include all data necessary to determine the amount of funds required.

(e) *Section 8 amendments.* Rental Certificate program cost amendments Provide budget authority increases to HA rental certificate programs to support increases in housing assistance payments to maintain the HA's program at the number of units originally approved by HUD. Funds are allocated on a needs basis based on actual housing costs and tenant contributions.

(f) *HOPE 1 and section 5(h) homeownership programs.* To provide replacement housing for HOPE 1 and section 5(h) projects. Field Office/Office of Indian Programs requests for rental certificate or rental voucher funding under this category will be approved on a first-come, first-served basis. Field Offices/Indian Programs Offices should include all data pertinent to determining the amount of funds required.

(g) *Family unification.* To assist eligible families that the public child welfare agencies have certified are families for which the lack of adequate housing is a primary factor in either the imminent placement of the families' children in out-of-home care, or the delayed discharge of children to the families from out-of-home care. Appropriations were provided for a demonstration program to be administered by public housing agencies in 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts. HUD recently published a separate NOFA describing the application and funding process for family unification rental certificates.

(h) *HOPE for elderly independence.* To assist frail elderly persons to live independently. HUD is conducting a national competition for supportive services grants. PHAs selected in the grant competition will be invited to submit applications for rental vouchers. The Department recently published a NOFA describing the application and funding process for HOPE for Elderly Independence (see 57 FR 23008, May 29, 1992).

(i) *Moving to opportunity demonstration.* To assist families with children to move out of areas with high concentrations of persons living in poverty through contracts with nonprofit organizations. Appropriations were provided for rental certificates to be used in a demonstration involving five cities with populations over 400,000, in metropolitan areas of over 1,500,000 population. The Department plans to publish a NOFA describing the application and funding process in summer 1992.

(j) *Veterans Administration supportive housing.* To assist homeless veterans with rental housing after their having received medical treatment from the Veterans Administration (VA). The VA has conducted a competition among its medical facilities. PHAs in the localities of the selected VA facilities were invited to apply for rental vouchers. A separate announcement describing the application and funding process was published in the Federal Register on March 20, 1992 (see 57 FR 9956).

(k) *St. Louis demonstration.* Appropriations were provided to replace public housing units in St. Louis that are eligible for demolition or disposition with five-year rental certificate assistance.

(l) *PHA portability fees.* To pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92–14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees.

II. Application Process

A. Obtaining Application Materials

Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD Field Office/Indian Programs Office. (Except as provided for Indian Housing Authorities in Section II.B, Submitting Applications, of this NOFA, only an original application should be submitted; it is not necessary to submit additional copies of the application.) In addition, the basic application, and other required submissions, are attached to this NOFA, as follows: Form HUD–52515 [Attachment 1]; Certification for a Drug-Free Workplace [Attachment 2]; Text for the Certification Regarding Lobbying [Attachment 3]; and Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4].

B. Submitting Applications

HA applications must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., the time at the office where the application is to be submitted) on August 28, 1992. The Indian Programs Office is the place of official receipt for IHA applications. An IHA also must submit, at the same time, a copy of its application to the HUD Field Office that has jurisdiction over the portion of the State in which the IHA is located. Field Offices/Indian Programs Offices will be responsible for notifying their HAs of the exact address and room number where applications are to be submitted.

III. Application Submission Requirements

A. Generally

(1) Applications must be submitted to the local Field Office/Indian Programs Office on Form HUD–52515 in accordance with the applicable program regulations.

(2) The application must identify the number of rental vouchers and rental certificates requested for families living in rental rehabilitation projects and for the homeless. The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the Field Office/Indian Programs Office can only rate and rank the application based on information the Office has on hand.

(3) Attachment 5 at the end of this notice lists the HUD Field Offices and the number of units and budget authority available for each Field Office. HAs should limit their applications to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease all the units within 12 months of ACC execution. The number of units on the HA application may not exceed the greater of: (a) Ten percent (10%) of the total rental vouchers and rental certificates under reservation for the HA; or (b) 50 units. An application may exceed this limit only if the HA cannot, within this limit, meet the needs of families affected by rental rehabilitation activities.

(4) HAs shall submit only one application (Form HUD–52515) with the exception of regional and State-wide HAs (see paragraph (5) of this section II.B of the NOFA). If both rental certificates and rental vouchers are requested on the same application, then the application will be given two project numbers, one for the Rental Certificate Program and one for the Rental Voucher Program. The total number of units applied for may not exceed the ten percent or 50-unit limitation.

(5) Regionals and State-wide HAs may submit one application for metropolitan areas and one application for nonmetropolitan areas, and each application will be considered separately. Each regional or State-wide HA application may request up to ten percent (10%) of the total rental vouchers and rental certificates the HA has under reservation for metropolitan areas or nonmetropolitan areas as applicable, or 50 units, whichever is greater.

(6) The Field Office/Indian Programs Office will reduce the number of units requested in any application that exceeds the ten percent or 50-unit limit to the greater of ten percent (10%) of the total number of rental vouchers and rental certificates under reservation or 50 units.

B. Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See Certification Regarding Drug-Free Workplace Requirements, Attachment 2 to this NOFA.)

C. Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the Byrd Amendment) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the texts for the Certification Regarding Lobbying (Attachment 3) and Standard Form LLL, Disclosure Form to Report Lobbying (Attachment 4) are attached to this NOFA.

D. Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the HA's application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

[Application for Rental Vouchers and Rental Certificates]

HA		Field Office		
Yes	No	Yes	No	
____	____	____	____	The application contains a completed Form HUD 52515.
____	____	____	____	The application specifies the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses.
____	____	____	____	The application states by number of bedrooms the total number of units requested by the HA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled families.
____	____	____	____	The application demonstrates that the project requested is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
____	____	____	____	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office/Indian Programs Office they do not have to be resubmitted.
____	____	____	____	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and/or 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the Field Office/Indian Programs Office. In the latter case, each proposed variation shall be specified and justified.
____	____	____	____	The application contains the HA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a HA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
____	____	____	____	The application (for rental vouchers and/or rental certificates) contains estimates of the average adjusted income for prospective participants for each bedroom size.

[Requirement for Drug-Free Workplace Certification and Anti-Lobbying Certification and Disclosure Statement]

HA		Field Office		
Yes	No	Yes	No	
____	____	____	____	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 2).)
____	____	____	____	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. The Department has determined that IHAs established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage. To comply, HAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4).

IV. Correction's to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office/Indian Programs Office no later than the date and time specified in section II of this NOFA. The Field Office/Indian Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office and/or Indian Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office/ Indian Program Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/ disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

A. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). 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, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD responsibilities. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 1437a, 1437c, 1437f.

Dated: July 21, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4810-31-M

Application for Existing Housing

Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

ATTACHMENT 1

OMB Approval No. 2502-0123 (exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for :
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application ~~is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project~~ is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (~~Housing Vouchers Only~~)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

BILLING CODE 4810-31-C

Attachment 2

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant assessment, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacturer, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4810-31-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.) Attachment 4

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	 **Congressional District,** *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

ATTACHMENT 5

FY 92 SECTION 8 ALLOCATION FACTORS BY HUD OFFICE

HUD OFFICE	METRO		NONMETRO		COMPOSITE	
	UNITS	DOLLARS	UNITS	DOLLARS	UNITS	DOLLARS
BOSTON, MASSACHUSETTS OFFICE	504	25,374,020	47	1,959,750	551	27,333,770
HARTFORD, CONNECTICUT OFFICE	221	9,935,560	25	1,002,665	246	10,938,225
MANCHESTER, NEW HAMPSHIRE OFFICE	85	3,549,620	117	4,098,095	202	7,647,715
PROVIDENCE, RHODE ISLAND OFFICE	80	3,126,325	0	0	80	3,126,325
BUFFALO, NEW YORK OFFICE	348	10,991,000	112	3,352,710	460	14,343,710
NEW YORK, NEW YORK OFFICE	2,003	85,493,040	25	903,840	2,028	86,396,880
NEWARK, NEW JERSEY OFFICE	624	28,872,470	0	0	624	28,872,470
BALTIMORE, MARYLAND OFFICE	220	7,922,090	25	778,040	245	8,700,130
CHARLESTON, WEST VIRGINIA OFFICE	43	1,267,100	88	2,168,050	131	3,435,150
PHILADELPHIA, PENNSYLVANIA OFFICE	494	17,593,125	61	1,831,960	555	19,425,085
PITTSBURGH, PENNSYLVANIA OFFICE	208	5,837,770	61	1,767,255	269	7,605,025
RICHMOND, VIRGINIA OFFICE	184	5,661,715	114	2,914,950	298	8,576,665
WASHINGTON, D.C. OFFICE	242	12,574,955	0	0	242	12,574,955
ATLANTA, GEORGIA OFFICE	250	8,073,570	186	4,058,665	436	12,132,235
BIRMINGHAM, ALABAMA OFFICE	166	4,227,290	100	2,032,180	266	6,259,470
COLUMBIA, SOUTH CAROLINA OFFICE	110	2,912,595	92	2,012,635	202	4,925,230
GREENSBORO, NORTH CAROLINA OFFICE	199	5,408,415	200	4,755,865	399	10,164,280
JACKSON, MISSISSIPPI OFFICE	41	1,155,240	163	3,506,275	204	4,661,515
JACKSONVILLE, FLORIDA OFFICE	609	20,561,795	54	1,499,990	663	22,061,785
LOUISVILLE, KENTUCKY OFFICE	113	3,026,325	147	3,314,720	260	6,341,045
KNOXVILLE, TENNESSEE OFFICE	75	1,942,125	36	774,235	111	2,716,360
NASHVILLE, TENNESSEE OFFICE	135	3,902,990	67	1,449,415	202	5,352,405
CARIBBEAN OFFICE	161	4,384,760	52	1,125,120	213	5,509,880
CHICAGO, ILLINOIS OFFICE	768	30,477,140	142	3,735,440	910	34,212,580
CINCINNATI, OHIO OFFICE	155	4,408,270	25	606,675	180	5,014,945
CLEVELAND, OHIO OFFICE	287	8,300,680	55	1,431,720	342	9,732,400
COLUMBUS, OHIO OFFICE	119	3,342,890	67	1,632,990	186	4,975,880
DETROIT, MICHIGAN OFFICE	332	10,685,395	25	650,490	357	11,335,885
GRAND RAPIDS, MICHIGAN OFFICE	108	3,181,820	75	1,976,315	183	5,158,135
INDIANAPOLIS, INDIANA OFFICE	206	6,019,545	86	2,080,195	292	8,099,740
MILWAUKEE, WISCONSIN OFFICE	230	6,920,215	102	2,566,605	332	9,486,820
MINNEAPOLIS–ST. PAUL, MINNESOTA OFFICE	172	6,397,345	82	2,116,500	254	8,513,845
FORT WORTH, TEXAS OFFICE	372	11,574,910	159	3,780,420	531	15,355,330
HOUSTON, TEXAS OFFICE	227	6,543,160	38	960,360	265	7,503,520
LITTLE ROCK, ARKANSAS OFFICE	59	1,572,525	109	2,296,470	168	3,868,995
NEW ORLEANS, LOUISIANA OFFICE	228	7,012,150	96	1,948,960	324	8,961,110
OKLAHOMA CITY, OKLAHOMA OFFICE	98	2,783,835	90	1,910,580	188	4,694,415
SAN ANTONIO, TEXAS OFFICE	198	6,147,415	54	1,243,540	252	7,390,955
DES MOINES, IOWA OFFICE	73	2,235,655	111	2,824,315	184	5,059,970
KANSAS CITY, MISSOURI OFFICE	156	4,368,145	112	2,519,885	268	6,888,030
OMAHA, NEBRASKA OFFICE	46	1,300,570	56	1,314,985	102	2,615,555
ST. LOUIS, MISSOURI OFFICE	124	3,814,890	66	1,435,470	190	5,250,360
DENVER, COLORADO REGIONAL OFFICE	260	7,960,290	197	5,593,205	457	13,553,495
HONOLULU, HAWAII OFFICE	67	3,569,580	35	1,677,230	102	5,246,810
LOS ANGELES, CALIFORNIA OFFICE	1,526	74,800,100	36	1,442,730	1,562	76,242,830
PHOENIX, ARIZONA OFFICE	122	4,248,560	40	1,191,800	162	5,440,360
SACRAMENTO, CALIFORNIA OFFICE	132	4,556,580	25	860,685	157	5,417,265
SAN FRANCISCO, CALIFORNIA OFFICE	726	36,560,920	64	2,229,150	790	38,790,070
ANCHORAGE, ALASKA OFFICE	0	0	25	1,107,395	25	1,107,395
PORTLAND, OREGON OFFICE	157	5,216,740	129	4,064,895	286	9,281,635
SEATTLE, WASHINGTON OFFICE	227	8,177,160	71	2,196,405	298	10,373,565

[FR Doc. 92–17857 Filed 7–28–92; 8:45 am]

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H.R. 158/P.L. 102-326

To designate the building in Hiddenite, North Carolina, which houses the primary operations of the United States Postal Service as the "Zora Leah S. Thomas Post Office Building". (July 23, 1992; 106 Stat. 843; 1 page) Price: $1.00

H.R. 4505/P.L. 102-327

To designate the facility of the United States Postal Service located at 20 South Montgomery Street in Trenton, New Jersey, as the "Arthur J. Holland United States Post Office Building". (July 23, 1992; 106 Stat. 844; 1 page) Price: $1.00

Last List July 28, 1992

Public Laws

102d Congress, 2nd Session, 1992

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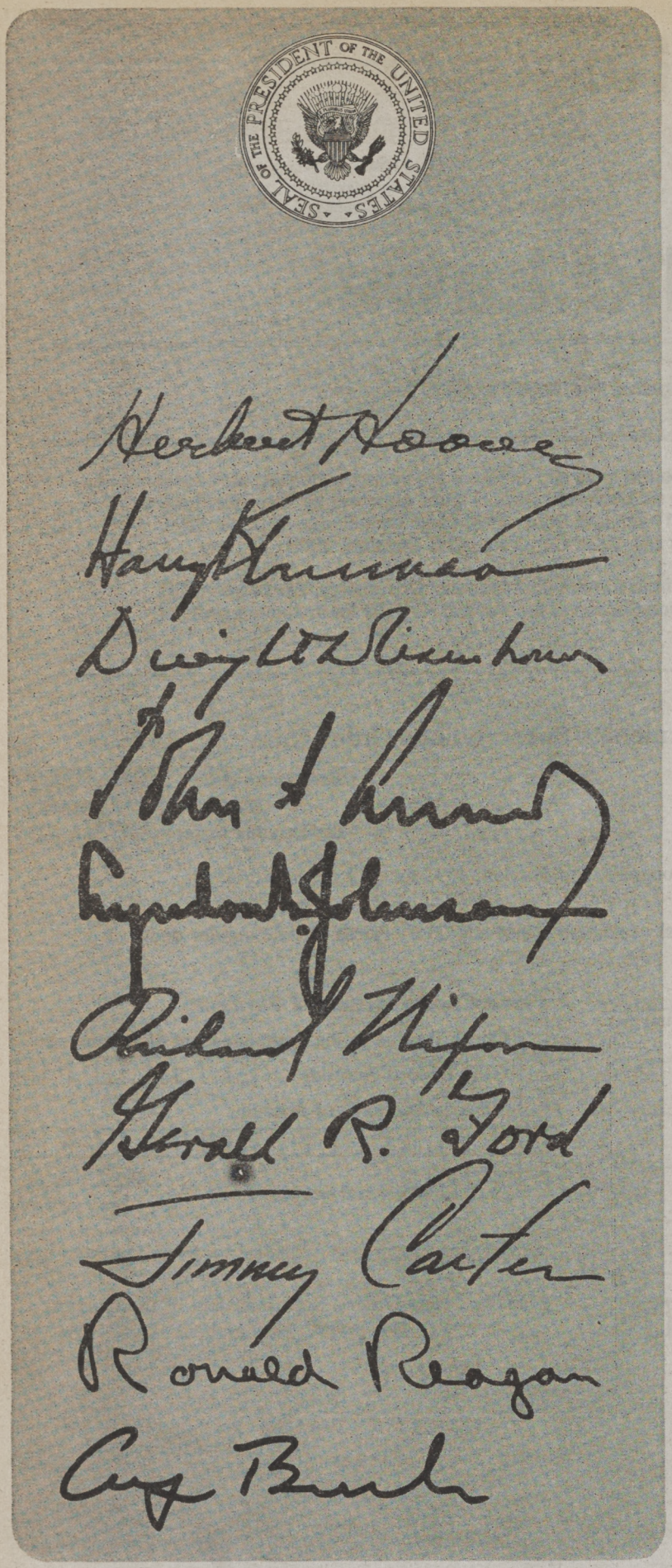

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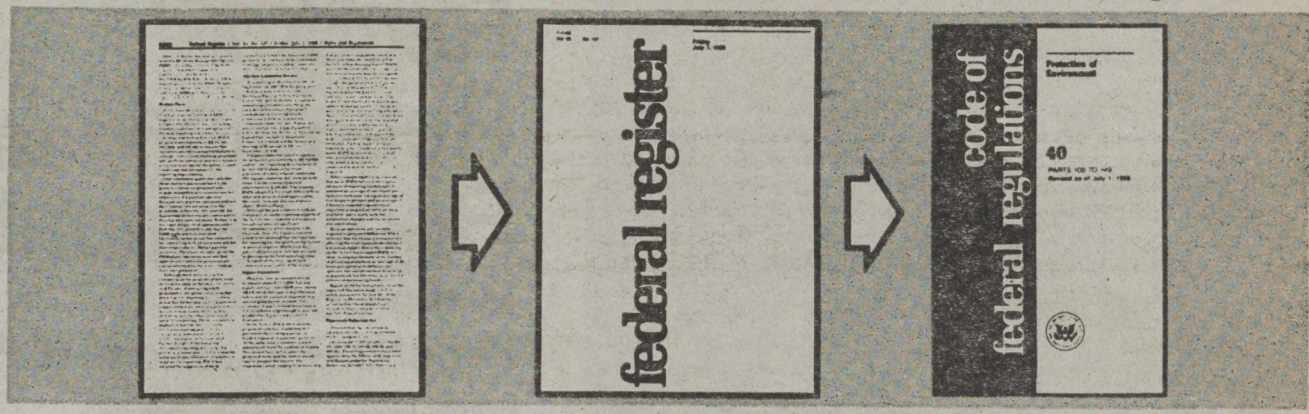

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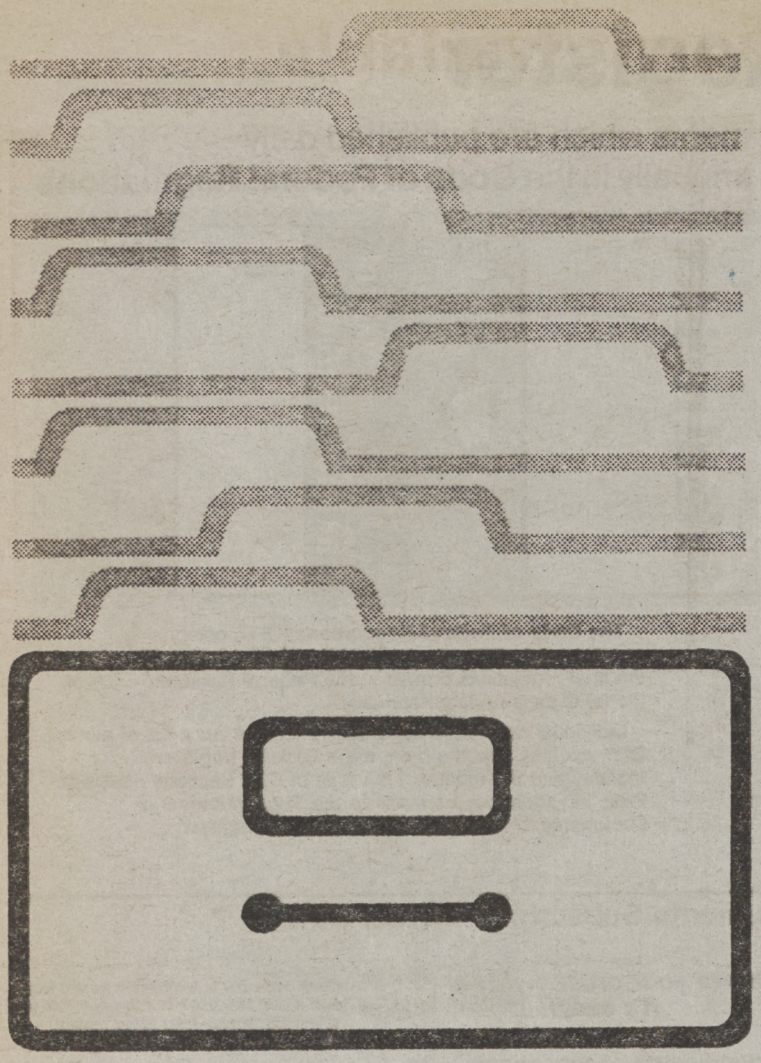

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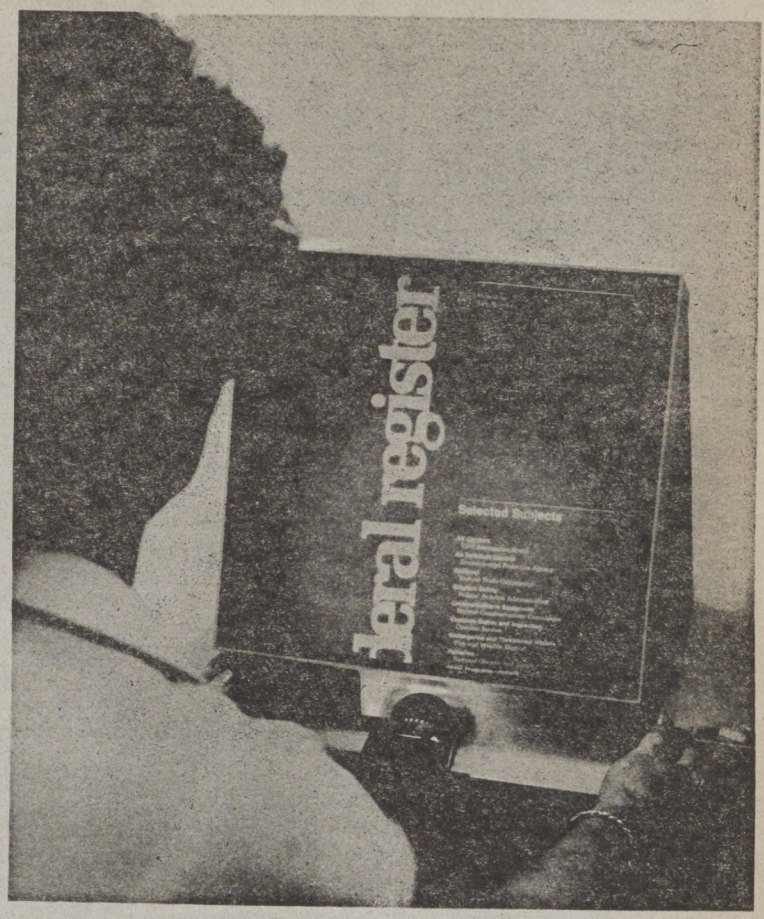

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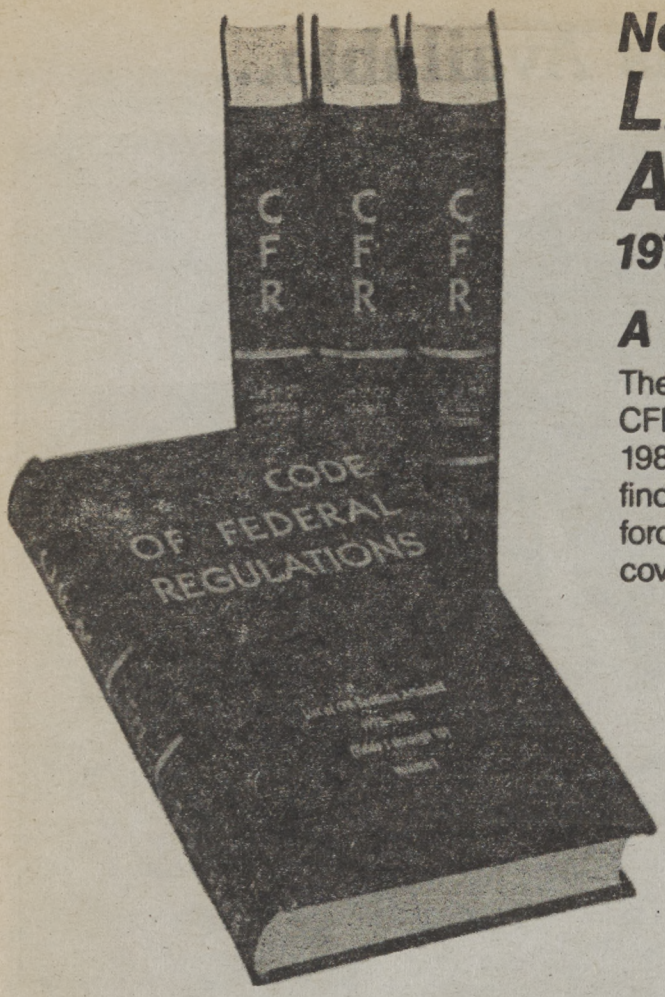

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