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

Contents

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
New England et al., 15

Agriculture Department
See Agricultural Marketing Service; Federal Grain Inspection Service; Forest Service

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

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Florida, 40
Missouri, 40
South Dakota, 40

Commerce Department
See Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 50
Export visa requirements; certification, waivers, etc.:
India, 51

Defense Department
See also Defense Logistics Agency
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 51

Defense Logistics Agency
NOTICES
Product certification and qualification program; electronic products administration fee, 52

Education Department
NOTICES
Agency information collection activities under OMB review, 52
Grants and cooperative agreements; availability, etc.:
Paul Douglas teacher scholarship program, 53
Vocational and academic integration learning program (model tech-prep education projects); demonstration projects, 152

Energy Department
See also Federal Energy Regulatory Commission
RULES
Financial assistance rules; miscellaneous amendments, 1
NOTICES
Natural gas exportation and importation:
Wes Cana Marketing (U.S.) Inc.; correction, 81

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Criteria for listing hazardous waste, 12
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Montana, 23
Wisconsin, 24

Export Administration Bureau
RULES
Export licensing:
Soviet Union, territories within former geographical area; export control status, 8

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Cessna 551 airplane, modified, 6
Terminal control areas and airport radar service areas, 166
PROPOSED RULES
Airworthiness directives:
Bell, 18
Boeing, 19
Canadair, Ltd., 21

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities under OMB review, 56
Coastal Barrier Improvement Act; property availability:
Caravelle Ranch, FL, 56

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Anticompetitive practices related to marketing affiliates of interstate pipelines, 9
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
UtiliCorp United Inc. et al., 54

Federal Grain Inspection Service
NOTICES
Agency designation areas:
North Dakota et al., 37
Oklahoma et al., 37
Tennessee, 38

Federal Housing Finance Board
RULES
Federal home loan bank system:
Directors; eligibility and financial disclosure, and conflict of interest requirements
Correction, 81

Federal Register Office
NOTICES
Public Laws; cumulative list:
102st Congress—
First session, 82

Federal Register, Administrative Committee
See Federal Register Office

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y); and membership of State banking institutions (Regulation H):
Appraisal standards for federally related transactions, 6
Truth in lending (Regulation Z):
Official staff commentary update
Correction, 81
NOTICES
Applications, hearings, determinations, etc.:
Puget Sound Bancorp, 57
Scott, Jerry G., et al., 57

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Mexican spotted owl
Hearings, 35

Food and Drug Administration
NOTICES
Human Drugs:
Radiopharmaceutical drug applications; chemistry documentation submission guideline; availability; correction, 81

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 80

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Indiana.
Fairmount Homes, Inc., et al.; modular housing and recreational vehicle plants, 40
Kansas, 41
Ohio, 41
Texas, 42
(2 documents)

Forest Service
NOTICES
Environmental statements; availability, etc.:
Umatilla National Forest, WA, 38

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 51

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration
NOTICES
Medicare:
Fiscal intermediaries and carriers—
Budgets; data, standards, and methodology, 57
Meetings:
Medicare-Physician Relationships Advisory Committee; correction, 81

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Training and technical assistance and planning programs, 158

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau

Internal Revenue Service
RULES
Procedure and administration:
Tax return information disclosure; quality or peer review and incapacity or death of preparer, 12

International Trade Administration
NOTICES
Antidumping:
New minivans from Japan, 43
Countervailing duties:
Non-rubber footwear from Argentina, 48
Stainless steel cooking ware from—
Korea, 48
Taiwan, 48

International Trade Commission
NOTICES
Import investigations:
Bathtubs and other bathing vessels and materials, 66
Erasable programmable read only memories, components, products containing memories, and processes for making memories, 67
Generalized Systems of Preferences—
Eligible articles list, etc., 67
Uranium from USSR, 68
See also Foreign Claims Settlement Commission

Justice Department
NOTICES
Pollution control; consent judgments:
Acolor Co. et al., 69

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
USPCI Clive Incineration Facility, Pony Express Reserve Area, UT, 65
Oil and gas leases:
Utah, 65
Recreation management restrictions, etc.:
North Hardscrabble Access Road, Glenwood Springs Resource Area, CO; camping, parking, and firearm restrictions, 66
Survey plat filings:
Nevada, 66

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Carter Mining Co. et al., 69

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 51

National Archives and Records Administration
See Federal Register Office

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities National Council; correction, 81

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 49
(2 documents)

National Telecommunications and Information Administration
NOTICES
Survivable high frequency radio antennas; technical description, 50

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 70
University of—
Texas, 71
Meetings:
Reactor Safeguards Advisory Committee, 72
Meetings; Sunshine Act, 80
Reports; availability, etc.:
Licensed power plants; safety issues status, 73

Personnel Management Office
PROPOSED RULES
Retirement:
Court orders affecting retirement benefits under Civil Service and Federal Employees Retirement Systems, 118
NOTICES
Meetings:
Federal Salary Council, 73

Public Health Service
See Food and Drug Administration

Sentencing Commission, United States
See United States Sentencing Commission

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

Transportation Department
See Federal Aviation Administration

Treasury Department
See Internal Revenue Service

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and private non-profit organizations—
Albanian educational and cultural exchange program, 73
Summer institute for English language educators from South Africa and Namibia, 77
Meetings:
Cultural Property Advisory Committee, 79

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 88

Separate Parts In This Issue

Part II
National Archives and Records Administration, Office of the Federal Register, 82

Part III
United States Sentencing Commission, 88

Part IV
Personnel Management Office, 118

Part V
Department of Education, 152

Part VI
Department of the Interior, Bureau of Indian Affairs, 158

Part VII
Department of Transportation, Federal Aviation Administration, 166

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

Proposed Rules:

831 118
838 118
841 118
842 118
843 118

7 CFR

Proposed Rules:

1001 15
1004 15
1124 15

10 CFR

600 1

12 CFR

208 6
225 6
226 81
932 81

14 CFR

21 6
25 6
71 166

Proposed Rules:

39 (3 documents) 18–21

15 CFR

770 8
778 8
785 8

18 CFR

250 9

26 CFR

301 12
602 12

40 CFR

261 12

Proposed Rules:

52 (2 documents) 23, 24

50 CFR

Proposed Rules:

17 35

Rules and Regulations

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

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

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Miscellaneous Changes

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending subparts A and B of the Financial Assistance Rules, 10 CFR part 600, some of which reflect desired policy changes, some of which are updates to the rules, and some of which correct errors in the rules.

EFFECTIVE DATE: Effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT:
Edward F. Sharp, Business and Financial Policy Division (PR-122), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8192
Linda Johnson, Office of the Assistant General Council, Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1900

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Changes to 10 CFR part 600
III. Discussion of Comments on Proposed Rule
IV. Review Under Executive Order 12612
V. Review under Executive Order 12291
VI. Review under the Regulatory Flexibility Act
VII. Review under the Paperwork Reduction Act
VIII. Review under the National Environmental Policy Act

I. Introduction

With this final rule, The Department of Energy (DOE) is amending its Financial Assistance Rules (Rules) to implement desired policy changes, update the Rules and correct errors contained therein. The changes will (1) state the need to comply with DOE regulations regarding the use of human subjects in research; (2) expand the criteria justifying a non-competitive financial assistance award to include a statutory mandate to make an award to a specific recipient; (3) include provisions to comply with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction; (4) revise the criteria for selection of unsolicited applications to state that the determination that a competitive solicitation would be inappropriate must be made in light of other solicitations the DOE may already have issued or is planning to issue; (5) elaborate on the nature of the information needed in the **Federal Register** notice to explain why an award is being made in response to an unsolicited proposal; (6) change the title of § 600.16; (7) modify the merit review requirements to allow a decision not to merit review a renewal award to be made closer in time to the beginning date of the renewal with appropriate approval; (8) change the words "evaluator" and "evaluation" in § 600.16(i) to "reviewer" and "review" to conform to the terminology used in that Section; (9) codify previously published class deviations for the Small Business Innovation Research (SBIR) program and make conforming changes elsewhere in the rules; (10) eliminate the payment provisions regarding the letter of credit system; (11) clarify the requirement regarding single bid or sole source procurements under research awards; (12) correct the reference in § 600.119(d) from 600.118 to 600.33; (13) change the reference in § 600.120(c) from Attachment F of OMB Circular A-110 to OMB Circular A-133; (14) delete references to the Intergovernmental Cooperation Act of 1968 in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421; (15) update an address included in § 600.14; and (16) correct typographical errors in §§ 600.103, 600.113, 600.420, 600.424, and 600.436.

Language is being added to § 600.2 to highlight the requirement that research recipients using human subjects must comply with 10 CFR part 745.

The inclusion of an additional ground for justifying the award of financial assistance on a noncompetitive basis recognizes that at times there is a statutory requirement to award funds to a specific recipient.

The provision concerning the use of seismic design and construction standards whenever Federal grants, loans or contracts are used for all or part of the construction costs is included to comply with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

The criteria for selection of an unsolicited application is changed to provide that a determination that a project would be inappropriate for a competitive solicitation is not by itself a sufficient ground to award it. Recent, current, or planned solicitations must also be considered in deciding whether to award an unsolicited proposal.

The requirement to publish in the **Federal Register** an explanation for making an award in response to an unsolicited proposal is being elaborated to stipulate that the explanation must also address the selection criteria for unsolicited proposals.

The title of § 600.16 is being changed to "Objective Merit Review" because the entire merit review process is the subject of the section, not just the affiliation of reviewers as the present title states.

The provisions regarding the merit review of applications currently provides that a determination not to conduct a merit review of a project at renewal must be made no later than one year prior to the renewal date. This is being changed to permit a waiver of the one year requirement so long as the project officer's supervisor and the responsible official concur in that determination and a review for technical merit is included as part of the determination. It also clarifies the point that awards which do not go through the merit review process are subject to the requirements established for award of noncompetitive financial assistance.

The words "evaluator" and "evaluation" in § 600.16(i) are being changed to "reviewer" and "review." The former terms have been in the Rules for a number of years and were inadvertently retained when this section was revised in October, 1988 to add the provisions (which use the terms "reviewer" and "review") concerning objective merit review.

Six class deviations affecting the Rules dealing with the Small Business Innovation Research (SBIR) program were published in the **Federal Register** on May 22, 1990 (55 FR 21008) and are herein codified. These deviations (1) simplify record-keeping requirements for Phase I SBIR recipients; (2) permit, at the discretion of the Contracting Officer, lump sum payments to be made to Phase I recipients; (3) permit Phase II SBIR recipients to have budget periods of up to 24 months; (4) require awarding agency approval for time extensions of project periods; (5) require awarding agency approval of any procurement expected to exceed $25,000 which is being awarded on a sole source basis or for which only one bid was received; (6) permit a fee or profit to be paid to SBIR recipients. Conforming changes are being made in other sections as well. (See paragraph 6.c. of Small Business Innovation Research Policy Directive, 53 FR 23829, June 24, 1988).

Questions have arisen about whether the DOE rulemaking dated October 13, 1989 (54 FR 41943), regarding the elimination of many prior approval requirements, was intended to apply to the prior approval provisions in § 600.119 which deal with procurements under research awards. That rulemaking was intended to apply to procurements under research awards, except for SBIR awards, and changes have been made to § 600.119 to clarify that point.

A typographical error is being corrected in § 600.103(f)(1).

A typographical error is being corrected in § 600.113(e).

References to the Intergovernmental Cooperation Act of 1968 (ICA) in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421 have been deleted. The ICA has been amended by the Cash Management Improvement Act of 1990 (CMIA), which in particular has affected the requirements regarding state interest payments. The specific impact of the CMIA will not be clear, however, until the Treasury Department completes its implementing regulations. In light of the changing nature of the legal requirements in this area, the Department is concerned that any attempt to list and explicate the relevant statutes might increase confusion and necessitate frequent revision of this regulation. Therefore, all references to specific statutes have been eliminated.

As a result of the phase-out of the Treasury Financial Communication System Letter-of-Credit, and the resultant need for the DOE to convert to another payment system, references to letter-of-credit as a payment mechanism is § 600.112 are being removed. The section on payments is also being restructured to more closely resemble the payment section in subpart E.

As a result of the promulgation of OMB Circular A-133 ("Audits of Institutions of Higher Learning and Other Non-Profit Institutions") on March 16, 1990, the reference in the Financial Assistance Rules to OMB Circular A-110, Attachment F, which deals with the same topic, is being replaced with a reference to Circular A-133.

An address is being changed in § 600.14(c).

A correction of a citation is being made in § 600.119(d)(2).

A typographical error is being corrected in § 600.420(a).

A typographical error is being corrected in § 600.424(b)(7)(ii).

A typographical error is being corrected in § 600.436(g)(2)(i).

II. Changes to 10 CFR Part 600

A new paragraph (c) is being added to § 600.2 to note the requirement that research involving human subjects must comply with 10 CFR part 745.

A new paragraph (C) is being added to § 600.7(b)(2)(i) to recognize as a grounds for issuing a financial assistance award on a noncompetitive basis a statutory requirement to issue an award to a particular recipient. To use this justification, the recipient must be specifically designated in the statute. The current paragraph (C) has been redesignated (H).

A new paragraph (c) is being added to § 600.12 to require that appropriate seismic design and construction standards be met if DOE funds are used in any building construction.

Section 600.14(c) is changed to update the address for receipt of a guide for preparing unsolicited applications/proposals.

Section 600.14(e)(1)(ii) is changed to provide that the determination of whether it would be appropriate to initiate a competitive solicitation prior to making an award of an unsolicited proposal is one factor to be considered along with whether an application would be eligible for award under a recent, current, or planned solicitation.

Section 600.14(f) is being revised to require that the explanation for making an award in response to an unsolicited application address the selection criteria in § 600.14(e)(1).

The title to § 600.16 is being change from "Reviewer affiliations" to "Objective merit review".

Section 600.16(a)(3)(ii) is being revised to permit a waiver to the requirement that a determination not to merit review a renewal be made at least one year prior to the renewal date. In such a case there must be a written justification, approved by the project officer's supervisor and the responsible official, explaining the reasons that a merit review is not being done. Further, the justification must contain a review of the technical merit of the project. The section is also being revised to clarify the point that if a renewal is not merit reviewed, it is to be treated as a noncompetitive award.

Section 600.16(i) is changed to substitute "reviewer" and "review" for "evaluator" and "evaluation" to conform to the terminology in the rest of § 600.16.

Section 600.31(d)(1) is changed to exclude SBIR awards from the provisions for automatic carryover applicable to all other research awards.

Section 600.31(f) is revised to exclude SBIR awards from the requirement that a single budget period not exceed 12 months.

Section 600.103(b)(6) is amended to exclude SBIR awards from the blanket waiver of prior approvals applicable to all other research awards.

In § 600.103(f)(1), "application" is being changed to "applicant".

Section 600.103(h) is amended to provide for the payment of a fee or profit to SBIR recipients.

Section 600.109(a) is amended to include a reference to an SBIR exception to some of the financial management requirements contained in § 600.125.

Sections 600.112 (a), (b), (c), (d), and (e) are revised to eliminate the provisions concerning letter of credit. The amended language continues to give primary status to advance payments to financial assistance recipients in conformance with the OMB Circulars. As a result of the new language, current sections are redesignated as follows: § 600.112(e) is redesignated 600.112(f); § 600.112(f) is redesignated 600.112(g); § 600.112(g) is redesignated 600.112(h); and § 600.112(h) is redesignated 600.112(i).

In § 600.113(b), the reference to the Intergovernmental Cooperation Act of 1968 is deleted.

In § 600.113(e)(1), "ther" is being changed to "other".

Section 600.119(c)(1) is revised to specifically state that single bid or sole source procurements under *research* financial assistance do not have to be approved by the awarding agency, with the exception of SBIR recipients, which are covered by § 600.125(d)(2).

Section 600.119(d)(2) is changed to correct the reference concerning patents, inventions and copyrights. The proper citation is § 600.33, not § 600.118.

Section 600.120 is amended by replacing the reference to Attachment F of OMB Circular A-110 with a reference to OMB Circular A-133.

Section 600.125 is added to codify the six previously published class deviations to the Rules applicable to the Small Business Innovation Research Program. Cross references to this section have been included in §§ 600.31(d)(1), 600.31(i), 600.103(b)(6), 600.103(h) and 600.109(a).

In § 600.420(a), "expand" is being changed to "expend".

In § 600.421(i), the references to the Intergovernmental Cooperation Act and the Indian Self-Determination Act are deleted.

In § 600.424(b)(7)(ii), "costs" in the second sentence is being changed to "cost".

In § 600.436(g)(2)(i), "seciton" is being changed to "section".

III. Discussion of Comments on Proposed Rule

No comments were received on the proposed rule.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

V. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291. The DOE has concluded that the rule is not a "major rule" because its promulgation 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 on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

VI. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

VIII. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights; Educational institutions; Energy; Grants/energy; Hospitals; Indian Tribal governments; Individuals; Inventions and patents; Non-profit organizations; Reporting requirements; and Small businesses.

In consideration of the foregoing, the Department of Energy hereby amends chapter II of title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC December 26, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance, and Program Management.

For the reasons set out in the preamble, part 600 of chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 644 and 646, Public Law 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Public Law 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308), unless otherwise noted.

2. In § 600.2, paragraphs (c), (d), (e) and (f) are redesignated as (d), (e), (f) and (g) respectively, and a new paragraph (c) is added to read as follows:

§ 600.2 Applicability.

* * * * *

(c) A financial assistance recipient performing research, development, or related activities involving the use of human subjects shall comply with DOE regulations in 10 CFR Part 745 "Protection of Human Subjects" and any additional provisions which may be included in the Special Terms and Conditions of the award.

* * * * *

3. In § 600.7, paragraph (b)(2)(i)(G) is redesignated as paragraph (b)(2)(i)(H) and a new paragraph (b)(2)(i)(G) is added to read as follows:

§ 600.7 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(G) A specific recipient has been statutorily designated.

* * * * *

§ 600.12 [Amended]

4. Section 600.12(c) is added as follows:

* * * * *

(c) Provision shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of the Uniform Building Code (1988 or as revised), shall be deemed appropriate.

5. Section 600.14 is amended by revising paragraphs (c) and (c)(1)(ii) and by adding a sentence to the end of paragraph (f) as follows:

§ 600.14 Unsolicited applications.

* * * * *

(c) *Preparation and submission of application.* A guide for preparing unsolicited applications/proposals is available from the Field/Headquarters Support Division (PR-132), Office of Procurement, Assistance and Program Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

* * * * *

(e) * * *

(1) * * *

(ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would be inappropriate.

* * * * *

(f) * * * Such an explanation must address the selection criteria contained in § 600.14(e)(1) (i) and (ii).

* * * * *

6. Section 600.16 is amended by revising the heading and paragraph (a)(3)(ii) as set forth below. In addition, paragraph (i) is amended by changing "evaluators" to "reviewers", "evaluator" to "reviewer" and "evaluation" to "review".

§ 600.16 Objective merit review.

(a) * * *

(3) * * *

* * * * *

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points during the course of the project. A determination that a project need not be reviewed at each renewal shall be made at the time the initial award is issued, or, in the event that unforeseen circumstances arise which preclude a merit review at a previously scheduled point during the course of a project, the merit review of a renewal application may be waived prior to the renewal of the project. The criteria on which the determination that a project need not be reviewed at each renewal is based, shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a) (1) and (2) of this section. For a waiver to be issued, the project officer shall prepare, with the concurrence of his or her immediate supervisor, a written determination for the approval of the responsible official that a merit review is not appropriate at the particular point in time, setting forth the circumstances that preclude the merit review. The determination shall contain an evaluation of the technical merit of the project being proposed for additional support. This determination shall also set forth the facts which would support the justification required by 10 CFR 600.7(b)(2)(i). Finally, the determination shall indicate the reports required under the award and shall be placed in the official file by the Contracting Officer.

* * * * *

7. Section 600.31(d)(1) is revised, paragraph (f)(3) is amended by replacing the period at the end with "; or", and a new paragraph (f)(4) is added, to read as follows:

§ 600.31 Funding.

* * * * *

(d) *Extensions.* (1) Recipients of research awards, except recipients of SBIR awards (See § 600.125(d)), may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

* * * * *

(f) * * *

(3) * * *; or

(4) The award is a Phase II SBIR award (see § 600.125(c)).

8. In § 600.103, paragraphs (b)(6) and (h) are revised to read as follows, and in paragraph (f)(1), "application" is changed to "applicant."

§ 600.103 Cost determinations.

* * * * *

(b) * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required:

(i) Changes in objectives or scope,

(ii) Temporary replacement or change of principal investigator or change of key personnel, and

(iii) Change of the institution to which the award is to be made.

All other Federal prior approval requirements, including those in OMB Circulars A-21 and A-110, are waived for research, except as provided in § 600.125 for SBIR awards. The recipient may maintain such internal prior approval systems as it considers necessary.

* * * * *

(h) *Fee or profit.* No increment above cost may be paid to a grantee or subgrantee under a DOE grant or subgrant, except for SBIR recipients as provided in § 600.125(d)(3). A fee or profit may be paid to a contractor providing goods or services under a contract with a grantee or subgrantee.

* * * * *

9. Section 600.109(a) is revised to read as follows:

§ 600.109 Financial management systems.

(a) *General.* Except as provided in paragraph (c) of this section and § 600.125 of this subpart, grantees and subgrantees shall have financial management systems which meet the minimum standards set forth in paragraph (b) of this section.

* * * * *

10. Section 600.112 (a), (b), (c), and (d), are revised, paragraphs (e) through (h) are redesignated as paragraphs (f) through (i) and a new paragraph (e) is added. The revised and added paragraphs are set forth below.

§ 600.112 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which the DOE will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided that their financial management systems meet the standards for fund control and accountability specified in § 600.109(b), including procedures or planned procedures that will minimize the time elapsing between the transfer of the funds from the U.S. Treasury and their disbursement by the grantee or subgrantee, except as provided in § 600.125(b)(5).

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. The DOE may also use the reimbursement method if the major portion of the project or activity will be financed by private financing or Federal loans, with the DOE grant

representing 25 percent or less of the total cost.

(e) *Conversion from advance payment method.* The DOE may convert a grantee from advance payment to reimbursement whenever the grantee no longer meets the criteria for advance payment specified in paragraph (c) of this section. Any such conversion may be accomplished only after the DOE has advised the grantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the grantee may take corrective action or provide satisfactory assurances of its intention to take such action.

* * * * *

§ 600.113 Program income.

11. Section 600.113(b) is revised to read as follows, and in paragraph (e)(1), first sentence, "ther" is corrected to read "other".

* * * * *

(b) *Income resulting from advances of DOE funds.* Unless there are statutory provisions to the contrary, a grantee shall remit to DOE any interest or other investment income earned on advances of DOE funds.

* * * * *

12. In § 600.119, paragraphs (c)(1) and (d)(2) are revised to read as follows:

§ 600.119 Procurement under grants and subgrants.

* * * * *

(c) *Prior approval requirements.* (1) A grantee or subgrantee must receive prior written approval from the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed $5,000 in the aggregate, and the grantee or subgrantee is not a State government, local government, Indian tribal government, SBIR award recipient (see § 600.125(d)(2)), or research award recipient.

* * * * *

(d) * * *

(2) A clause requiring the contractor to comply with applicable DOE requirements concerning patents, inventions and copyrights (see § 600.33).

* * * * *

13. In § 600.120, the introductory text to paragraph (c)(1) is revised as follows:

§ 600.120 Audit requirements.

* * * * *

(c) *Nonprofit organizations.* (1) Except for public hospitals and public colleges and universities that are included in an audit conducted pursuant to Subpart D of this Part, all grantees and subgrantees that are institutions of higher education, hospitals or other nonprofit organizations shall comply with the requirements of OMB Circular A-133, and shall:

* * * * *

14. Section 600.125 is added as follows:

§ 600.125 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Research (SBIR) Program. This codifies six class deviations pertaining to the SBIR program.

(b) *Provisions Applicable to Phase I SBIR Awards.* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements:

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to regulation by the standards of cost allowability;

(2) Although detailed budgets are submitted by a recipient and reviewed by the DOE for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from the DOE is required for situation involving sole source or single bid procurements as provided in § 600.125(d)(2). Prior approval from the DOE is also required for any variation from the requirement that no more than one-third of Phase I work can be done by sub-contractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (see § 600.112), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must be conditioned to require the recipient to return to the DOE amounts remaining unexpended at the end of the project if those amounts exceed $500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are consistent with § 600.115;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the DOE.

(c) *Provision Applicable to Phase II SBIR Awards.* Phase II SBIR awards may be made for a single budget period of 24 months.

(d) *Provisions Applicable to Phase I and Phase II SBIR Awards.* (1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A grantee or subgrantee must receive the prior written approval of the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed $25,000 in the aggregate.

(3) A fee or profit may be paid to SBIR recipients.

§ 600.420 [Amended]

15. In the first sentence of paragraph 600.420(a), "expand" is corrected to read "expend".

16. Section 600.421(i) is revised to read as follows:

§ 600.421 Payment.

* * * * *

(i) *Interest earned on advances.* Unless there are statutory provisions to the contrary, grantees and subgrantees shall promptly, but at least quarterly, remit to the Federal agency interest earned on advances. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 660.424 [Amended]

17. In the second sentence of paragraph 600.424(b)(7)(ii) "costs" is corrected to read "cost".

§ 660.436 [Amended]

18. In paragraph 600.436(g)(2)(i), "seciton" is corrected to read "section".

[FR Doc. 91-31281 Filed 12-31-91; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R-0685]

Regulation H, Regulation Y—Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Revision of Compliance Date.

SUMMARY: The Board published a final rule at page 27762 of the issue for Thursday, July 5, 1990 (FR Doc. 90-15401), that contains a compliance date of July 1, 1991, regarding the use of state certified or licensed appraisers in federally related transactions. That compliance date is being revised by the Board to December 31, 1992, in response to section 472 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

DATES: *Effective Date*: January 2, 1992. *Compliance Date*: State certified or licensed appraisers, as appropriate, must be used for federally related transactions by December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Supervisory Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), contact Dorthea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. sections 3310, 3331-3351, the Board adopted a final rule regarding Appraisal Standards For Federally Related transactions (12 CFR parts 208 and 225) on June 27, 1990. The Board's rule contains two compliance dates: the compliance date of August 9, 1990, for adherence to minimal appraisal standards, and the compliance date of July 1, 1991 (subsequently extended to December 31, 1991), for the use of state certified or licensed appraisers. Title XI's provisions regarding the mandatory use of state certified or licensed appraisers was amended by section 472 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (Pub. L. No. 102-242, Section 472, 105 Stat. 2236, 2386) (December 19, 1991). That amendment changed the compliance date in Section 1119(a) of Title XI regarding the mandatory use of certified or licensed appraisers in federally related transactions from "not later than July 1, 1991," to "not later than December 31, 1992." To reflect the change contemplated by the amendment to Title XI of FIRREA, the Board is revising the compliance date in its appraisal regulation regarding the mandatory use of state certified or licensed appraisers in federally related transactions to December 31, 1992. The impact of this amendment on financial institutions regulated by the Board is that the Board's regulatory requirements regarding the mandatory use of state certified or licensed appraisers in federally related transactions will not be effective until December 31, 1992. Under section 472's amendment to Title XI, however, states remain free to adopt their own implementation date for state appraiser licensing and certification requirements prior to December 31, 1992.

(12 U.S.C. 321; 12 U.S.C. 1844(b); 12 U.S.C. 3339, 3340.)

Board of Governors of the Federal Reserve System, December 26, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-31287 Filed 12-31-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-65; Special Conditions No. 25-ANM-52]

Special Conditions: Modified Cessna 551 Airplane: High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 551 airplane modified by ElectroSonics Division of AiRadio Corporation of Columbus, Ohio. This airplane is equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is December 23, 1991.

Comments must be received on or before February 17, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-65, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM-65. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-65." The postcard will be date/time stamped, and returned to the commenter.

Background

On October 16, 1991, ElectroSonics Division of AiRadio Corporation applied for a Supplemental Type Certificate to

modify the Cessna Model 551 airplane. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of a pilot's-side electronic flight instrument system (EFIS) that is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subchapter C, of the FAR, ElectroSonics Division of AiRadio Corporation must show that the altered Cessna Model 551 airplane meets the applicable requirements as specified in §§ 21.101 (a) and (b), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) and (b); or (3) special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A27CE for the Cessna Model 551 airplane. Those are part 23 of the FAR, effective February 1, 1965, as amended by Amendments 23–1 through 23–16; part 25 of the FAR, effective February 1, 1965, as amended by Amendments 25–1 through 25–17; and various sections and findings of equivalent safety that are not pertinent to these special conditions. Those sections of part 23 and part 25 that are pertinent to this installation include: § 23.1311, as amended through Amendment 23–41; §§ 25.1301, 25.1303(b), and 25.1322, as amended through Amendment 25–38; and §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended through Amendment 25–41. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (that is, part 23 and part 25 requirements) do not contain adequate or appropriate safety standards for the modified Cessna Model 551 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.115(a).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10–500 KHz	60	60
500–2000 KHz	80	80
2–30 MHz	200	200
30–100 MHz	33	33
100–200 MHz	150	33
200–400 MHz	56	33
400–1000 MHz	4,020	935
1–2 GHz	7,850	1,750
2–4 GHz	6,000	1,150
4–6 GHz	6,800	310
6–8 GHz	3,600	666
8–12 GHz	5,100	1,270
12–18 GHz	3,500	551
18–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type

certification basis for the modified Cessna Model 551 airplane:

1. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

The following definition applies with respect to this special condition:

2. Critical Function. Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 91-31272 Filed 12-31-91, 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 778, and 785

[Docket No. 911223-1323]

Exports to Territories Included Within the Geographic Area of the Former Soviet Union

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The rapidly changing situation in the geographic area formerly known as the Union of Soviet Socialist Republics (U.S.S.R., Soviet Union) has caused exporters to question the export control status of that geographic area.

All of the geographic area that has been known as the U.S.S.R. remains a controlled destination and continues to fall within Country Group Y. At this time, the provisions of the Export Administration Regulations (EAR) that have been in effect for the U.S.S.R. continue to apply to that area. The Baltic Republics of Estonia, Latvia, and Lithuania also remain in Country Group Y.

Until new political entities are identified in the EAR, exporters may continue to use the designations "Union of Soviet Socialist Republics", "Soviet Union", or "U.S.S.R." on export control documents involving that geographic area.

References to the U.S.S.R. in parts 770, 778, and 785 of the EAR are revised to reflect this policy.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4252.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., NW., room 1622, Washington, DC 20230.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 770, 778, and 785 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 770 [AMENDED]

1. The authority for part 770 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (43 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat 120 (22 U.S.C. 3201 *et seq* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PARTS 778 & 785 [AMENDED]

2. The authority citation for parts 778 and 785 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978), E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 770—[AMENDED]

3. In Supplement No. 1 to part 770, under the heading "Country Group Y", the "Union of Soviet Socialist Republics" is removed and replaced by "The geographic area formerly known as the Union of Soviet Socialist Republics"

PART 778—[AMENDED]

4. Supplement No. 5 to part 778 is amended by removing the "Soviet

Union" and by adding "The geographic area formerly known as the Union of Soviet Socialist Republics", in alphabetical order.

PART 785—[AMENDED]

5. Section 785.2 is amended by revising the section heading and by adding a new sentence at the end of paragraph (a)(1), as follows:

§ 785.2 Country Group Q, W, and Y [1]: Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, and Laos.

(a)(1) * * * The term "U.S.S.R.", as used herein, refers to the geographic region formerly known as the Union of Soviet Socialist Republics.

* * * * *

Dated: December 27, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-31326 Filed 12-27-91, 4:43 pm]

BILLING CODE 3510-DT-M

[1] See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 250

[Docket No. RM87-5-008; Order No. 497-C]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Order Extending Sunset Date and Amending Final Rule

Issued December 20, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order extending sunset date and amending final rule.

SUMMARY: The Commission issued a final rule in Order No. 497 adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates.

The reporting requirements in Order No. 497 were extended several times by various documents published in the **Federal Register.**

This order extends the final rule's reporting requirements for an additional year, from December 31, 1991, to December 31, 1992. In addition, this order amends the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

EFFECTIVE DATE: In order to prevent a gap in the rule's reporting requirements, the extension of the sunset provision for the rule's reporting requirements is effective January 1, 1992. The amendment to the final rule is also effective January 1, 1992. However, since the record in this case has been filed with the United States Court of Appeals for the District of Columbia Circuit, the court has exclusive jurisdiction over the matter pursuant to section 19(b) of the Natural Gas Act. Therefore, the extension of the sunset provision for the reporting requirements and the amendment to the final rule are subject to leave of court. If the dates are affected by court action, a document will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is extending the sunset date of Order No. 497's [1] reporting requirements for an additional year, from December 31, 1991, until December 31, 1992. The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

II. Public Reporting Burden

This order does not change the reporting burden in the final rule, as revised in Order No. 497-A, that already is in effect. The order clarifies the reporting requirements of FERC Form No. 592 and extends the sunset provision for an additional year, from December 31, 1991, to December 31, 1992. Clarification of the reporting requirements will reduce or eliminate the filing of unnecessary duplicative information. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1991.

The current annual reporting burden for collection of information is estimated to be 6,996 hours for FERC Form No. 592 (1902-0157). The industry burden is based on an estimated average of 10.60 hours per filing for the 55 respondents to complete 660 filings of FERC Form No. 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining the data needed, and completing and reviewing the collection of information.

III. Background

The Commission issued a final rule in this proceeding on June 1, 1988,[2] which was the result of a lengthy rulemaking proceeding begun in response to petitions for rulemaking [3] and several cases that had raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[4] The final rule in Order No.

[1] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988); Order No. 497-A, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. ¶ 30,868 (December 15, 1989); Order No. 497-B, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (December 13, 1990).

[2] *Id.*

[3] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Co. in Docket No. RM87-2-000.

[4] Northern Natural Gas Co., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,401 (1986); Tenneco Oil Co., *et al.* 36 FERC ¶ 61,399 (1986).

497 adopted standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.[5] The final rule also adopted a sunset provision of December 31, 1989, for the reporting requirements and specifically reserved the Commission's option of extending the date should the Commission decide there was a need to do so.

On December 15, 1989, the Commission issued Order No. 497-A which granted partial rehearing of Order No. 497 and clarified certain provisions of the final rule.[6] Order No. 497-A also extended the final rule's reporting requirements for an additional year, from December 31, 1989, to December 31, 1990, and stated that the Commission would examine the need to further extend the rule's reporting requirements prior to their sunset date of December 31, 1990.

On December 13, 1990, the Commission issued Order No. 497-B [7] which extended the sunset date of Order No. 497's reporting requirements for an additional year, from December 31, 1990 until December 31, 1991, because several issues regarding Order Nos. 497 and 497-A were pending. These issues included those raised in the protests of filings made by pipelines in response to issuance of Order No. 497, the applicability of the standards of conduct to discount sales programs, as well as the appeal to the U.S. Court of Appeals for the District of Columbia Circuit.

Several pipelines and local distribution companies filed with the United States Court of Appeals for the D.C. Circuit for judicial review of the Order No. 497 marketing affiliate rule, and the case is pending before that court in *Tenneco Gas* v. *FERC*, No. 89-1768. Consequently, the Commission's action in this proceeding is subject to leave of the court.

IV. Discussion

Order No. 497 has two basic elements: (1) The establishment of standards of conduct intended to assure that pipelines do not use the essential facility in a discriminatory manner to the competitive advantage of their affiliates, and (2) the requirement that pipelines record and report the essential terms of transactions with or to the benefit of affiliates in order to allow verification of compliance with the standards of conduct.

The Commission is extending the reporting requirements of Order Nos. 497 and 497-A for an additional year from December 31, 1991, to December 31, 1992, because certain issues regarding Order Nos. 497 and 497-A are still pending and a new issue has arisen. The issues still pending are the applicability of the standards of conduct to discount sales programs and the appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The new issue that has arisen is the proposal in the recent Notice of Proposed Rulemaking (NOPR) in Docket No. RM91-11-000 [8] to require pipelines to comply with Order No. 497's standards of conduct and reporting requirements by considering their unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate. With these issues before the Commission, it would be premature to let the reporting requirements lapse at the end of this year.[9]

The Commission also continues to believe, as it did at the time it issued Order No. 497-B, that the potential for discriminatory behavior by pipelines in favor of their marketing affiliates continues to exist. The Commission still believes that reporting has a deterrent effect because participants in a transaction are aware that at some time in the future the Commission may call upon them to explain how the transaction complies with the standards of conduct. In addition, reporting is an important enforcement tool when deterrence is not successful because data regarding transactions is one of various sources of information that is needed to verify whether a particular prohibited practice has occurred. Therefore, allowing the reporting requirements to lapse at this time would hamper the Commission's ability to enforce those standards. Continuation of these requirements will assist the public and Commission staff in monitoring potential abuses.

For all of the foregoing reasons, the Commission is extending the reporting requirements of Order Nos. 497 and 497-A for an additional year from December 31, 1991 to December 31, 1992. This additional time should enable the Commission to resolve some of the issues discussed above. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1992, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date. By that time we should also have the benefit of the court's review of Order Nos. 497 and 497-A.

The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file. Currently, pipelines are required to file FERC Form No. 592 on magnetic tape or computer disk and three paper printouts of the information contained on the magnetic tape or computer disk. The paper printouts are sometimes voluminous. The Commission has determined that the number of paper printouts of the FERC Form No. 592 information can be reduced. Accordingly, the Commission is amending the final rule to require pipelines to file only one paper printout of all the information required by FERC Form No. 592.

The Commission is also clarifying certain elements of the reporting requirements to eliminate the filing of certain unnecessary information. Experience has shown that the data filed by some pipelines can be substantially reduced while still complying with the filing requirements. The following clarifications should help reduce the amount of unnecessary duplicative information filed each month.

Filing requirements are set forth in § 250.16 of the Commission's regulations.[10] Pipelines are required to file transportation log information "relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months," at the end of the month following the month any changes occurred. Additionally, discount information is required to be filed within 15 days of the close of the pipeline's billing period.[11] The contents of the transportation log are listed in § 250.16(b)(2), which describes FERC Form No. 592 as:

[5] 53 FR 21139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988).

[6] 54 FR 52781 (December 22, 1989), FERC Stats & Regs. ¶ 30,868 (December 15, 1989).

[7] 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (Dec. 13, 1990).

[8] In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Docket No. RM91-11-000, 56 FR 38372 (August 13, 1991), FERC Stats. & Regs. ¶ 32,480 (July 31, 1991).

[9] On November 27, 1991, the Independent Gas Marketers Coalition (IGMC) filed a petition for extension of Order No. 497's reporting requirements IGMC stated that the reporting requirements serve an important role in assuring that the gains made in reducing discriminatory practices of pipelines in favor of their marketing affiliates are not lost. On December 11, 1991, Indicated Producers filed an answer in support of IGMC's petition and Enron Interstate Pipelines filed an answer in opposition to IGMC's petition

[10] 18 CFR 250.16.

[11] 18 CFR 250.16(d)(4).

[C]onsisting of a log that contains the following information on *all requests for transportation service* made by affiliated marketers or in which an affiliated marketer is involved for transportation that would be conducted pursuant to Subparts B, G, H, or K of Part 284[ ] (Emphasis added.)

Some pipelines have interpreted these requirements to mean that they must file all of the log data for all of their affiliated transactions, pending and operational, even when there has been a change only in some elements of one transaction. This has resulted in the filing of duplicative information, which is already on file with the Commission.

This was clearly not the Commission's intent. Monthly filings need only include information: (1) On those individual affiliate-related transactions which have not previously been reported; (2) those elements of the transaction which have changed; and (3) specifically required discount information. For instance, unnecessary information is being filed when a pipeline files its entire affiliate transportation log each month, rather than filing only those contracts/requests which are new or amended. Another example is where the pipeline has discounted service under an affiliate-related contract with multiple receipt and delivery points. In these instances, the pipeline should file discount information, as required by § 250.16(d)(4)(ii),[12] for only those point-to-point combinations served at a discount. There is no need to report all of the other points as well. Only the information which relates to the discount "requested, offered, or provided" need be reported.

These clarifications should significantly reduce the amount of information being filed by pipelines subject to the rule. In addition, several minor technical changes are necessary to facilitate the electronic reporting of information about "evergreen" contracts. The instructions to FERC Form No. 592 will be modified to reflect these clarifications and minor technical changes.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[13] require that OMB approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule are contained in FERC Form No. 592 "Marketing Affiliates of Interstate Pipelines." The Commission is notifying OMB that it is extending the sunset provision for Order No. 497 and submitting the information collection provisions in this notice for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Administrative Findings and Effective Date

Section 553(b) of the Administrative Procedure Act (APA)[14] specifies that notice and comment for rulemaking are not required when the "agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission finds that notice and comment are unnecessary since the Commission is merely amending the rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

Section 553(d) of the APA[15] generally requires a rule to be effective not less than 30 days after publication in the **Federal Register** unless good cause is found to shorten the time period. The sunset date for the reporting requirements will expire before the APA's 30 day publication requirement has been fulfilled thus causing a gap in the reporting requirements. Therefore, in order to prevent a gap in the rule's reporting requirements, this order's extension of the sunset provision for the rule's reporting requirements, from December 31, 1991, to December 31, 1992, is effective January 1, 1992. However, since the record in this case has been filed with the U.S. Court of Appeals for the District of Columbia Circuit, the court has exclusive jurisdiction over the matter pursuant to section 19(b) of the Natural Gas act.[16] Therefore, the extension of the sunset provision for the reporting requirements is subject to leave of court.

List of Subjects in 18 CFR Part 250

Natural gas. Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission, amends part 250, chapter I, title 18 Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 250—FORMS

1. The authority citation for part 250 is revised to read as follows:

Authority: 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text, (d)(1) and (e)(2) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* * * *

(3) Maintain all information required under this section from the time the information is received until December 31, 1992.

* * * * *

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1992.

(2) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1993 to:

* * * * *

(d) *When to file.* (1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until December 31, 1992. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

* * * * *

(e) *How to file.* * * *

(2) The magnetic tape or computer disk must be accompanied by one paper printout of all the FERC Form No. 592 information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public

[12] 18 CFR 250.16(d)(4)(ii).

[13] 5 CFR 1320.14.

[14] 5 U.S.C. 553(b).

[15] 5 U.S.C. 553(d).

[16] 15 U.S.C. 717r.

Information, 825 North Capitol Street NE., Washington, DC 20426.

* * * * *

[FR Doc. 91-31213 Filed 12-31-91, 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8383]

RIN 1545-AP34

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations relating to the disclosure of tax return information for purposes of quality or peer reviews published in the **Federal Register** for December 27, 1991.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, 202-566-5985.

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction reflect the changes made by the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the final regulations contain errors which are misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations published December 27, 1991 (56 FR 66995) FR Doc. 91-30712, are corrected as follows:

Paragraph 1. On page 66995, column 3, in the preamble, the "Explanation of provisions" portion, is corrected to read as follows:

Explanation of Provisions

"The temporary regulations define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that the definition is too broad and might defeat the statutory purpose of maintaining the confidentiality of tax return information. Suggestions to further limit the scope of the definition were not adopted because of the requirements of section 7216(b)(3) of the Code. Other commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services which may require disclosures of tax return information to be properly completed. The final regulations do not change the definition of a quality or peer review to include reviews of auditing and accounting services. However, the Service is issuing a notice of proposed rulemaking addressing the definition of quality or peer reviews and auditing and accounting services.

Persons permitted to conduct quality or peer reviews under the temporary regulations (i.e. persons subject to Circular 230) are attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are not under suspension or disbarment from practice before the Service. Some commentators suggested that the classes of persons permitted to conduct a quality or peer review be expanded to include non-certified, licensed public accountants ("LPAs") who are neither enrolled agents, nor otherwise eligible to practice before the Service. Unenrolled LPAs are not subject to the provisions of Circular 230. The Service believes that permitting only persons subject to Circular 230 to conduct a quality or peer review helps to prevent unauthorized disclosures of tax return information. Accordingly, the final regulations do not adopt this suggestion.

Finally, some commentators suggested that the temporary regulations should be revised to permit franchisees to disclose tax return information to their franchisor for purposes that are unrelated to a quality or peer review. Along similar lines, one commentator suggested that a franchisor's employees who are not eligible to practice before the Service should nonetheless be permitted to conduct quality or peer reviews. Neither suggestion was adopted. The first suggestion raised concerns that were not within the scope of these regulations. The second suggestion would not further the statutory purpose of maintaining the confidentiality of tax return information."

PART 301 [CORRECTED]

§ 301.7216-2 [Corrected]

Par. 2. On page 66996, column 2, in § 301.7216-2, the third sentence of paragraph (o) is corrected to read, "A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-4085-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule and response to comments.

SUMMARY: On May 19, 1980, as part of its regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA promulgated a series of criteria for listing wastes as hazardous. On July 19, 1991, the Agency proposed to conform the language of the regulation to reflect the Agency's intent and consistent interpretation of that regulation. Today's rule finalizes the proposed rule.

EFFECTIVE DATE: January 13, 1992.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-91-CLTP-FFFF and is located in the EPA RCRA Docket room M2427, 401 M Street, SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 260-9327. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 260-3000. For technical information, contact Mr. William A. Collins, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4791

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA promulgated regulations implementing section 3001 of RCRA. Section 3001(a), among other provisions, requires the Agency to promulgate criteria for listing wastes as hazardous. The Agency's regulations to implement this section of the Act are codified at 40 CFR 261.11.

Section 261.11(a)(3) of the regulations sets forth the criteria for listing toxic

wastes. The original version of this provision stated that the Agency would list a waste as toxic if the waste contains any toxic constituent listed in appendix VIII of part 261 unless, after considering a series of enumerated factors, the Administrator determines that the waste is not capable of posing a substantial hazard to human health and the environment even if managed improperly. Appendix VIII contains a list of substances shown in scientific studies to be toxic, carcinogenic, mutagenic or teratogenic at certain concentrations. The factors set out in the rule—drawn for the most part from sections 1004(5) and 3001(a) of RCRA—included the nature of the toxic constituents, the concentration of toxic constituents in the waste, the migratory potential of the constituents and their mobility and persistence after migrating from a waste. Other factors were the plausible ways the waste could be mismanaged, the quantity of waste generated, damage incidents caused by past management of the waste, and action by other regulatory agencies regarding the waste or waste constituents.

In promulgating the regulations, EPA intended to evaluate, and in actual practice always has evaluated, relevant waste factors in its specific listing actions, and then made determinations as to whether wastes containing an appendix VIII constituent are capable of causing substantial harm if mismanaged. (See Listing Background Documents of: May 19, 1980, 45 FR 33084–33137; November 12, 1980, 45 FR 74884–74894; November 25, 1980, 45 FR 78524–78550; January 16, 1981, 46 FR 4614–4620; May 29, 1981, 46 FR 27473–27480; May 10, 1984, 49 FR 19922–19923; January 14, 1985, 50 FR 1978–2006; October 23, 1985, 50 FR 42936–42943; December 31, 1985, 50 FR 53315–53320; February 13, 1986, 51 FR 5327–5331, February 25, 1986, 51 FR 6537–6542; May 28, 1986, 51 FR 19320–19322; September 13, 1988, 53 FR 35412–35421; October 6, 1989, 54 FR 41402–41408; and December 11, 1989, 54 FR 50968–50979 (evaluating waste streams for presence of appendix VIII constituents together with factors enumerated at 40 CFR 261.11(a)(3)).) As originally written, however, the rule has been read by some to imply that wastes are presumed to be hazardous if they contain an appendix VIII constituent (conceivably in any concentration), and that the enumerated factors are to be used only to rebut the presumption. As stated above, the Agency has never applied the rule in this way, and has always considered appropriate factors in determining whether to list wastes. Accordingly, on May 4, 1990 (55 FR 18726), the Agency amended the wording of the rule to more clearly reflect the intent of § 261.11(a)(3), and the Agency's proper and longstanding practice in applying it.

Since the amendment represented no change in EPA listing policy, it was viewed as a technical amendment, and was promulgated without allowing an opportunity for public notice and comment. However, the Agency learned that some organizations opposed EPA's interpretation, and favored a retention of the May 19, 1980 language which they perceived as including a "presumption." As stated above, EPA has never listed a waste on the basis of such a presumption. The Agency does not believe that the mere presence of an appendix VIII constituent by itself justifies the listing of a waste as hazardous. However, in the interest of a full public airing of the issue, the Agency obtained a judicial remand[1] of the May 4, 1990 amendment and proposed to amend § 261.11(a)(3) to clarify that wastes will be listed as hazardous if they contain one or more appendix VIII constituents and, after considering the enumerated factors, the Administrator determines that the waste is capable of posing substantial harm if managed improperly. The proposal was published on July 19, 1991 (56 FR 33238).

The Agency received 28 written comments on the proposal. Twenty-seven of these comments strongly supported the change in regulatory language as proposed. Their reasoning was that the mere presence of an appendix VIII constituent in a waste in any concentration or under any conditions should not result in the regulation of a waste as hazardous. The last commenter strongly disagreed with the proposed change in regulatory language. The commenter maintained that the "two minor but significant wording changes * * * reverse( ) the presumption under which EPA lists particular wastes as hazardous * * *." In response, as noted above, EPA intended to evaluate, and in actual practice always has evaluated, relevant waste factors in its specific listing actions, and then made determinations as to whether wastes containing an appendix VIII constituent are capable of causing substantial harm if mismanaged. The Agency does not believe that a "presumption" should exist that the mere presence of an appendix VIII constituent, no matter how small, justifies the listing of a waste as hazardous. The lone dissenting commenter also claims that the revision would increase EPA's burden in making waste listings. In response, the Agency notes that this wording change will not increase the Agency's burden in listing determinations because the Agency always has made its listing determinations based upon the interpretation clearly reflected in the language being finalized today. Based upon the comments received, the Agency is promulgating the change in regulatory language as proposed.

As stated in the preamble to the May 4, 1990, amendment and July 19, 1991, proposal, the change in language is merely intended to more clearly reflect the Agency's consistent interpretation of the 1980 regulatory language; it is not intended to and will not affect existing Agency listing practices. Thus, EPA has considered and will continue to consider the factors identified in 40 CFR 261.11(a)(3) in making listing determinations.

Economic Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Since today's rule does not impose any new substantive regulatory requirements on the regulated community, this rule is not a major rule subject to the RIA requirements of Executive Order 12291.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely revises the language of § 261.11(a)(3) to reflect the Agency's consistent interpretation and does not impose any new substantive regulatory requirements on the regulated community.

Paperwork Reduction Act

Today's rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

[1] The remand was issued in the case of *EDF* v *EPA*, No. 90–1387 (D.C. Cir.) on May 20, 1991

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 12, 1991

F. Henry Habicht II,

Acting Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.11, paragraph (a)(3) introductory text, is revised to read as follows:

§ 261.11 Criteria for listing hazardous waste.

(a) * * *

(3) It contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

* * * * *

[FR Doc. 91-30969 Filed 12-31-91; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 57, No. 1
Thursday, January 2, 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 Parts 1001, 1004, and 1124

[Docket No. AO-14-A65, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Revised Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1001	New England	AO-14-A65
1002	New York-New Jersey	AO-71-A80
1004	Middle Atlantic	AO-160-A68
1005	Carolina	AO-388-A5
1007	Georgia	AO-366-A34
1011	Tennessee Valley	AO-251-A36
1030	Chicago Regional	AO-361-A29
1033	Ohio Valley	AO-166-A62
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A57
1040	Southern Michigan	AO-225-A43
1044	Michigan Upper Peninsula	AO-299-A27
1046	Louisville-Lexington-Evansville.	AO-123-A63
1049	Indiana	AO-319-A40
1065	Nebraska-Western Iowa	AO-86-A48
1068	Upper Midwest	AO-178-A46
1079	Iowa	AO-295-A42
1093	Alabama-West Florida	AO-386-A12
1094	New Orleans-Mississippi	AO-103-A54
1096	Greater Louisiana	AO-257-A41
1097	Memphis, Tennessee	AO-219-A47
1098	Nashville, Tennessee	AO-184-A56
1099	Paducah, Kentucky	AO-183-A46
1106	Southwest Plains	AO-210-A53
1108	Central Arkansas	AO-243-A44
1124	Pacific Northwest	AO-368-A20
1126	Texas	AO-231-A61
1131	Central Arizona	AO-271-A30
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A10
1138	New Mexico-West Texas	AO-335-A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; amendment.

SUMMARY: A tentative decision was issued on December 10, 1991, which proposed a separate class and price for skim milk used to produce nonfat dry milk under the New England, Middle Atlantic, and Pacific Northwest marketing orders. That tentative decision contained a product price formula using a nonfat dry milk yield factor of 9. This revised tentative decision changes from 9 to 8.5 the yield factor used to compute Class III-A prices for skim milk used to manufacture nonfat dry milk (NFDM) under these orders, since the latter number is more appropriate. All of the other findings and conclusions of the tentative decision remain unchanged.

DATES: Comments are due on or before February 3, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will facilitate the orderly disposition of the market's reserve milk supplies.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991, published July 22, 1991 (56 FR 33395).

Tentative Decision. Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482)

Notice is hereby given of the filing with the Hearing Clerk of this revised tentative decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and Certain Other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this revised tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 30-August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395).

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pricing producer milk used to manufacture butter and nonfat dry milk.* These findings are added to supplement

the findings and conclusions of the tentative decision issued on December 10, 1991. The tentative decision proposed a separate price and class for skim milk used to produce nonfat dry milk under the New England, Middle Atlantic, and Pacific Northwest marketing orders. That decision provided a special pricing formula for skim milk that is used to make nonfat dry milk (NFDM). The formula used a yield factor of 9. After further consideration, it is concluded that a factor of 8.5 would more appropriately coordinate Class III-A prices with basic formula prices when the market prices for milk and dairy products are at support buying levels.

There a number of comparative calculations which are based on the yield factor of 9 in the tentative decision. However, the skim milk values that would result from the application of the formula when milk and product prices are at support levels were not computed. For example, if the market price for nonfat dry milk was at the support purchase price of 85 cents per pound, the Class III-A price for skim milk would be $6.525 per hundredweight, based on a yield factor of nine pounds. Also, if the basic formula price and butter prices were at supports, the resulting values of a hundredweight of skim milk would be $6.175. Thus, the formula price for Class III-A would overstate the value of skim milk by about 35 cents per hundredweight. The use of an 8.5-pound yield factor, which is more representative of manufacturing yields, would result in a Class III-A price of $6.16, which approximates the skim milk value of the basic formula price at the price support level.

As a result of this modification, the proposed order amendments in the tentative decision are revised as indicated below. In addition, paragraphs 34 through 39 under issue number 1 of the tentative decision issued December 10, 1991 are revised to read as follows:

The Class III-A skim value would be computed, by subtracting a processing allowance of 12.5 cents from the powder price and multiplying the result by 8.5. For Orders 1 and 4, the Extra Grade Powder Price for the Central States production area should be used. For Order 124, the Grade A powder price for the Western production area should be used. In August 1991, the skim value of Class III-A milk would have been $6.87 per hundredweight under Order 1 and $6.89 under Order 4. For Order 124, the skim value would have been $6.51 per hundredweight. This compares with a $7.89 skim value under orders providing the M-W price as the Class III price, $7.99 and $8.01 under Orders 1 and 4, respectively, which provided seasonal adjustments to Class III prices and $7.63 under Order 124, which provided a lower butter/powder "snubber" price for Class III milk in that month.

In Orders 1 and 4, the skim values for Class III-A milk would have averaged 63 cents per hundredweight less in 1990 and 48 cents per hundredweight less for the first 10 months of 1991 under the Class III pricing formula adopted herein. For Order 124, the Class III-A skim value would have been 76 cents per hundredweight less in 1990 and 56 cents per hundredweight less during January-October 1991.

The skim values for Class III-A milk under the product formulas provided for Orders 1, 4 and 124 would have averaged somewhat lower than such values for Class III milk in both 1990 and 1991. However, it is noteworthy that for Orders 1 and 4 the values would have been lower in 8 months and higher in 4 months of 1990 and lower in each month of January-October 1991. For Order 124, skim values under the new formula for NFDM would have been lower in 10 months and higher in 2 months of 1990 and lower in each month of January-October 1991.

The price formula provides a yield factor of 8.5 so that the order price for milk used to make NFDM compares favorably with the recognized value of such milk when market prices for milk and dairy products are at supports. A 12.5-cent-per-pound drying cost is compatible with industry experience and also with the processing allowance formerly recognized under the support program in connection with drying whey. Such factor is now used in the computation of the Class II formula price under Federal orders.

The plant operating cost information in this record is not exhaustive. However, there is sufficient data to indicate that the $1.06 make allowance provided in the formula for drying a hundredweight of skim milk into powder is not so high that it would create an incentive for handlers to divert milk to drying plants rather than making the milk available to other plant operators processing dairy products demanded by consumers. On the other hand, it is not so low that such plants would be unable to continue functioning as outlets of last resort for distress milk which exceeds the needs of the market's handlers.

The record also indicates that the California Milk Stabilization Branch regularly collects data on operating costs for the purpose of establishing make-allowance costs under the State's milk program. The latest survey covered plants that processed 98 percent of the nonfat dry milk processed in that area. The results of that survey indicate that for a wide range of plant volumes the weighted average per pound cost of producing NFDM was 12.87 cents. Using a yield factor of 8.5, a manufacturing cost of $1.09 per hundredweight of skim milk is reflected.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and

commercial activity specified in a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire revised tentative decision plus the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

September 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004, and 1124

Milk marketing orders.

Signed at Washington, DC, on: December 24, 1991.

John E. Frydenlund,

Deputy Assistant Secretary for Marketing and Inspection Service.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the revised tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1001, 1002 and 1124 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

In the amendments to part 1001 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1001.50 is revised to read as follows:

3. Section 1001.50 is amended by adding a new paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

In the amendments to Part 1004 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1004.50 is revised to read as follows:

3. Section 1004.50 is amended by revising the section heading and by adding a new paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

In the amendments to part 1124 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1124.50 is revised to read as follows:

3. Section 1124.50 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III-A price.* The Class III-A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent.

Interim Marketing Agreement Regulating the Handling of Milk in the Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to _____, all inclusive, of the order regulating the handling of milk in the New England and certain other marketing areas (7 CFR Part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1991, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) (Seal)

By _____

(Name) (Title)

(Address)

Attest _____

[FR Doc. 91-31232 Filed 12-31-91; 8:45 am]

BILLING CODE 3410-02-M

[1] First and last sections of orders.

[2] Appropriate Part Number.

[3] Next consecutive Section Number.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ASW-42]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, 205B, and 212 Helicopters; and BHTI manufactured military Model UH-1B, UH-1F and UH-1H Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice proposes to adopt an airworthiness directive (AD) that would establish a mandatory replacement schedule for the main rotor pillow bolts, washers, and nuts on certain BHTI manufactured helicopters. This supplemental notice contains changes to an earlier notice of proposed rulemaking. The proposed AD is needed to prevent separation and failure of the main rotor hub assembly which could result in loss of control of the helicopter.

DATES: Comments must be received by February 18, 1992.

ADDRESSES: The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas. Comments may be inspected between 9 a.m. and 3:30 p.m., weekdays, except Federal holidays.

Submit comments in triplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, Docket Number 90-ASW-42.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

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 taking action on the proposed rule. The proposal contained in this Notice may be changed in light of comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ASW-42." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this SNPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 90-ASW-42, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to Bell Model 204B, 205A, A-1, B, and 212 helicopters; and Military Model UH-1B, 1F and 1H helicopters, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 5, 1991 (56 FR 4581). That NPRM would have required a retirement life of 1,200 hours' time in service for the main rotor pillow block bolts, washers and nuts. That NPRM was prompted by reports of at least five cases of pillow block bolt fatigue cracks on BHTI Model 205A-1 and 212 helicopters. Failure of all four bolts will allow separation of the main rotor from the helicopter.

The FAA determined that these special pillow block bolts, part number (P/N) 204-011-171-003, can no longer be operated with an unlimited service life and that these bolts, along with the mating nuts, P/N EB080 or 42FLW-820, and washers, P/N 140-007-33S28-3, should be removed from further service as specified in the proposal. These same bolts, nuts, and washers are used also on the military Model UH-1B, UH-1F, and UH-1H helicopters and are subject to the same operating environment. It was proposed that they be removed at the same time in service as the

corresponding transport category civilian models.

The FAA received one comment in response to the NPRM. The commenter, the airframe manufacturer, proposed replacing these parts within 300 hours' time in service after the effective date of the AD, but no later than the next scheduled 1,200 hours' time in service replacement of the main rotor retention straps and, thereafter, at each replacement of retention straps or overhaul of the main rotor hub assembly. After reconsideration, the FAA agrees. Since this new replacement schedule is beyond the scope of the original NPRM, a supplemental NPRM is being issued. In addition, the commenter recommended that the bolt torque requirements included in Paragraph (a)(1) of the NPRM be more fully described. The FAA also agrees with this recommendation, and additional torque requirements are detailed in this supplemental notice.

Since this condition is likely to exist or develop on helicopters of the same type designs, the proposed AD would establish a specified replacement schedule for the main rotor pillow block bolts, nuts, and washers installed on these helicopters.

It is estimated that approximately 1,250 helicopters of U.S. registry would be affected by the Notice, and that it would cost $130 per aircraft to replace the four bolts, four nuts, and four washers approximately every 1,200 hours' time in service, for a total fleet cost of $162,500 each year.

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

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, and Safety

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Southern Aero Corporation; and Southwest Florida Aviation: Docket No. 90-ASW-42.

Applicability: All Model 204B, 205A, 205A-1, 205B, and 212 helicopters, certificated in any category, and military Model UH-1B, UH-1F, and UH-1H Helicopters, certificated in the restricted category.

Compliance: Required as indicated, unless already accomplished.

To prevent separation of the main rotor pillow blocks from the hub assembly as a result of bolt cracking which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of this AD; or at the next main rotor hub retention strap change; or at the next hub assembly overhaul; whichever occurs first, remove the four bolts, part number (P/N) 204-011-171-003, joining the two pillow blocks to the main rotor yoke assembly. Reinstall the pillow blocks using new bolts, P/N 204-011-171-003; nuts, P/N EB080 or 42FLW-820; and washers, P/N 140-007-33S28-3 as follows:

(1) Coat the shank of the bolts with corrosion prevention compound, such as MIL-C-16173 Grade 1, and dry torque the bolts and nuts 65 to 79 foot-pounds. Retorque nuts within 15 to 30 hours' time in service after the initial installation. If the torque has reduced below the minimum value of 65 foot-pounds, repeat the torque check at intervals of 15 to 30 hours' time in service until the torque remains at 65-foot pounds or until the torque check has been accomplished four times. If a loss of torque occurs after four checks, remove and replace the bolts, nuts and washers and begin again with the torque check procedure.

(2) After initial installation or retorque, apply sealant, such as Bell P/N 299-947-107 TYIII CL7, to the four bolt heads, washers, nuts and yoke mating surfaces to prevent moisture from entering the pillow block retention area.

(b) Thereafter, remove the bolts and associated hardware from the pillow block and replace with new bolts, nuts, and washers as described in paragraph (a) of this AD at each hub assembly overhaul, at each change of the main rotor hub retention strap, or whenever the bolts are removed for any reason.

(c) Rework or repair of the bolts, P/N 204-011-171-003; nuts, P/N EB080 or 42FLW-820; and washers, P/N 140-007-33S28-3, is not authorized.

(d) In accordance with 14 CFR 21.197 and 21.199, flight is permitted to a base where the action required by this AD may be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

(f) The request should be forwarded through an FAA Principal Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, ASW-170.

Note: Bell Helicopter Textron, Inc., Alert Service Bulletins, ASB 204-90-27, Revision A; ASB 205-90-38, Revision A; and ASB 212-90-62, Revision A, all dated October 11, 1990, pertain to this AD. A copy of the service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

Issued in Fort Worth, Texas, on December 12, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-31275 Filed 12-31-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-231-AD]

Airworthiness Directives; Boeing Model 727-200 and 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Boeing Model 727-200 and 727-200F series airplanes, which currently requires repetitive inspection to detect cracks of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary. Such cracking, if not corrected, could result in rapid depressurization of the cabin. This action would revise the AD to include an additional optional repair that, if accomplished, would terminate the repetitive inspection requirement of the

existing AD. This proposal is prompted by the development of a repair that significantly reduces the possibility of fatigue cracks developing.

DATES: Comments must be received no later than February 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-231-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

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 shall 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 taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-231-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-231-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On January 24, 1991, the FAA issued AD-91-03-19, Amendment 39-6885 (56 FR 4536, February 5, 1991), applicable to Boeing Model 727-200 series airplanes, to require inspections to detect cracks of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary. That action was prompted by reports of fuselage skin cracks in this area. The requirements of the AD were intended to detect and correct such cracking in a timely manner, so as to prevent consequent rapid depressurization of the cabin.

Since issuance of that AD, a repair procedure has been developed that significantly reduces the probability of further fatigue cracking. The FAA has determined that the accomplishment of this repair would constitute terminating action for the repetitive inspections required by the existing AD.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991, which provides instructions for accomplishing a fatigue-resistant repair. This repair involves the installation of a thicker doubler.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would revise AD 91-03-19 to add the fatigue-resistant repair procedures, in accordance with the service bulletin previously described, as an optional repair method. Once accomplished, this repair would constitute terminating action for the repetitive inspections required by the AD. The service bulletin, described above, has been added as an addition source for appropriate service information.

The format of the proposed rule has been restructured to be consistent with the standard **Federal Register** style.

Paragraph (e) of the proposed rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

There are approximately 1,250 Model 727-200 and 727-200F series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry would be affected by this AD. Should an operator elect to accomplish the optional terminating modification proposed by this AD action, it would take approximately 30 work hours per airplane to accomplish the modification, at an average labor cost of $55 per work hour. Required parts would cost $108 per airplane. Based on these figures, the total cost impact of the proposed optional modification would be $1,758 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-6885 as follows: **Boeing:** Docket 91-NM-231-AD. Revises AD 91-03-19, Amendment 39-6885.

Applicability: Model 727-200 and 727-200F series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent rapid depressurization of the cabin due to fuselage cracks under the center engine inlet pedestal housing, accomplish the following:

(a) Perform a detailed external visual inspection for fuselage skin cracks from body station (BS) 1090 to BS 1110, in accordance with Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991, or previous FAA-approved revisions, within the time specified in subparagraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes identified as Group 1 in the service bulletin, inspect within 500 flight cycles or 2 months after March 11, 1991 (the effective date of AD 91-03-19, Amendment 39-6885), whichever occurs first.

(2) For airplanes identified as Group 2 in the service bulletin, inspect within 1,250 flight cycles or 6 months after March 11, 1991, whichever occurs first.

(3) For airplanes identified as Group 3 in the service bulletin, inspect within 2,500 flight cycles or 18 months after March 11, 1991, whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 2,500 flight cycles or 18 months, whichever occurs first.

(c) If fuselage skin cracks are found, prior to further flight, accomplish either of the following:

(1) Repair in accordance with the Boeing Alert Service Bulletin 727-53A0204, Revision 2, dated August 9, 1990, or previous FAA-approved revisions. After repair, continue the repetitive inspections in accordance with paragraph (b) of this AD. Or

(2) Repair in accordance with Part III, paragraph B. or D., of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991. This constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(d) *In cases where cracking is not found,* modification in accordance with one of the following service documents constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD:

(1) Boeing Drawing 65C35757; or

(2) Paragraph C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991, or Revision 2, dated August 9, 1990.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-31273 Filed 12-31-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-248-AD]

Airworthiness Directives; Canadair, Ltd., Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes, which currently requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. This action would require modification of the sensing line. This proposal is prompted by the development of a modification which, if installed, eliminates the need for the repetitive visual inspections prior to and after each refuelling of the tail cone fuel tank. The actions specified by the proposed AD are intended to prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

DATES: Comments must be received by February 20, 1992.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-248-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421; fax (516) 791-9024.

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 shall 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 taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-248-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-248-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On July 31, 1991, the FAA issued AD 91-17-02, Amendment 39-8000 (56 FR 38337, August 13, 1991), to require repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. That action was prompted by two reports of sensing lines to the tail cone fuel tank level control valves breaking as a result of damage caused by maintenance in the aft equipment bays. The requirements of that AD were intended to prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning

strike or other ignition source in the area.

Since issuance of that AD, Canadair, Ltd., has issued Revision 1 of Alert Service Bulletin A601-0381, dated August 26, 1991, which describes procedures to relocate the sensing line forward of the aft shut-off valve. Relocation of the sensing line will reduce the potential for maintenance damage, and will eliminate the possibility of the tail tank emptying into the aft equipment bay if the sensing line breaks. When relocated, the sensing line will also relieve any pressure buildup in the refuel/defuel line due to thermal expansion between the shutoff valves. The remaining three tube assemblies between forward and aft shutoff valves are replaced as a precaution against any prior thermal expansion damage. Once this modification is installed, the need for repetitive inspections of the sensing line is eliminated. Transport Canada Aviation, which is the airworthiness authority of Canada, has classified the Alert Service Bulletin as mandatory and has issued Canadian Emergency Airworthiness Directive CF-91-22 in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA totally informed of the above situation. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91-17-02 to require modification of the sensing line forward of the aft shut-off valve. The actions would be required to be accomplished in accordance with the service bulletin previously described. Accomplishment of this modification would constitute terminating action for the currently-required repetitive visual inspections of the sensing line prior to and after each refuelling of the tail cone fuel tank.

It is estimated that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 33 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,820.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-8000, and by adding the following new airworthiness directive:

Canadair, Ltd.: Docket No. 91-NM-248-AD. Supersedes AD 91-17-02, Amendment 39-8000.

Applicability: Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) series airplanes equipped with a tail cone fuel tank, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after August 28, 1991 (the effective date of AD 91-17-02, Amendment 39-8000), or prior to refuelling of the tail cone fuel tank, whichever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with no fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain, in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. If leakage is found prior to further flight, either drain the tail cone fuel tank, or replace the tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) Within 6 months after the effective date of this AD, modify the sensing line, and perform functional tests of the refuel/defuel line, tail tank fuel shroud, and tail tank sensing line, in accordance with Canadair Alert Service Bulletin A601-0381, Revision 1, dated August 26, 1991.

(d) Modification of the sensing line, as required by paragraph (c) of this AD, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

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

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-31274 Filed 12-31-91; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

42 CFR Part 52

[MT3-1-5349; FRL-4089-9]

Disapproval of State Implementation Plans; Montana; Open Burning Regulation Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: In this action, EPA is proposing to disapprove revisions to the Montana State Implementation Plan (SIP) that were submitted by the Governor of Montana on April 9, 1991. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307 to allow the open burning of creosote-treated railroad ties, which was previously prohibited in ARM 16.8.1302.

EPA's review of the submittal determined that the proposed regulations do not adequately demonstrate how public health and welfare will be protected during the open burning of creosote-treated railroad ties. This is in direct conflict with section 75-2-102 of the Montana Clean Air Act, which is part of the approved SIP. Section 75-2-102 states that it is the policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare."

In addition, section 110(a)(2) of the Federal Clean Air Act, as amended, requires that a SIP contain enforceable emissions limitations and a plan for determining compliance with the emissions limitations. Also, the State must demonstrate that adequate personnel and resources are available for implementing and enforcing the SIP. This submittal did not demonstrate any of these requirements.

For additional information, EPA reviewed an open burn permit that was issued to Burlington Northern Railroad on June 26, 1991 to burn creosote-treated railroad ties. EPA's review found that the requirements listed in the permit for approval of open burning of creosote-treated railroad ties were not explicit enough to ensure protection of human health and welfare.

Therefore, EPA is proposing to disapprove the revision to the Montana open burning regulations that would allow the burning of creosote-treated railroad ties. Any source for which a permit was issued under the State's revised open burning rules may be subject to EPA enforcement of the previous version of the open burning rule approved in the SIP, which strictly prohibits the opening burning of creosote-treated railroad ties.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Montana Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59620

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1765, (FTS) 330-1765.

SUPPLEMENTARY INFORMATION:

A. History

Montana has previously revised its open burning regulations numerous times. The original version, which was effective November, 1968, did not specifically prohibit the burning of treated wood. However, the regulation did prohibit the burning of "chicken litter, animal droppings, garbage, dead animals, tires, waste oil, tar paper and similar materials creating dense smoke, when burned." This regulation was submitted in the 1972 SIP submittal, which was approved by EPA.

A 1978 versions of the open burning regulation strictly prohibited the burning of railroad ties, as follows: "Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tar papers, or toxic wastes shall not be disposed of by open burning." This version was also approved in the SIP.

On April 22, 1982, the State submitted a revision to the SIP, which included a revision to the open burning regulation. In this version of the open burning regulation, under ARM 16.8.1302, "Prohibited Open Burning," the State prohibited the burning of "treated lumber and timbers." This regulation was approved by EPA as a revision to the SIP on July 15, 1982 (47 FR 30762).

B. 1991 Submittal

On April 9, 1991, the Governor of Montana submitted revisions to the SIP. A revision was made to ARM 16.8.1302 to prohibit the burning of treated lumber and timbers, "except creosote-treated railroad ties * * *." Revisions were also made to ARM 16.8.1307 to provide for the permitting of the disposal of railroad ties through open burning. Other revisions were made to ARM 16.8.1307 to include additional provisions for all conditional air quality open burning permits.

The State was notified, on June 12, 1991, that the submittal was administratively and technically complete. In that letter, however, EPA raised several concerns about the toxicity and hazards associated with the burning of creosote-treated wood products and requested further information from the State on how Montana would ensure protection of human health and welfare with the regulation revision. The State indicated that it would not be able to respond to EPA's concerns until a much later date. In order to meet statutory deadlines for processing SIP submittals, EPA decided to continue processing the submittal. EPA determined that the State submittal was in direct conflict with Section 75-2-102 of the Montana Clean Air Act, which states that it is the public policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare," because the submittal did not adequately show how the public health and welfare would be protected during the open burns of creosote-treated railroad ties. Since the Montana Clean Air Act is in the approved SIP, the regulation revision was found to be in direct conflict with the existing SIP.

For additional information, EPA reviewed an open burn permit which the State had issued to Burlington Northern Railroad on June 24, 1991 to burn creosote-treated railroad ties in accordance with its revised open burning regulations. EPA's review found that the conditions of the permit did not clearly define any specific procedures for open burning to reduce emissions. In addition, under subtitle C of the Resource Conservation and Recovery Act (RCRA), material that is disposed or intended for disposal is defined as solid waste pursuant to 40 CFR 261.2, and a generator of solid waste must determine if the solid waste meets a determination of hazardous waste, as defined in 40 CFR 261, subparts C and D. The State, however, did not require that the source make a determination of whether the material to be burned constituted hazardous waste. Also, the State required that railroad ties must not be burned within two miles of any community. However, due to the toxicity and hazards associated with the burning of creosote-treated railroad ties, EPA was concerned that this requirement

may not fully ensure adequate protection of human health and welfare.

On September 12, 1991, EPA notified the State that EPA would be proposing to disapprove the SIP revision on the basis that the open burning regulation lacked the specific requirements to adequately ensure the protection of human health and welfare, which was in direct conflict with the approved SIP. Additional review of the open burn permit issued to Burlington Northern Railroad substantiated EPA's concerns on the protection of the public health.

However, EPA also provided the state with a final opportunity to submit any additional information which might address EPA's concerns by October 1, 1991. In a letter dated September 30, 1991, the State notified EPA that it was unable to respond to EPA's concerns within the timeframe given. The State will continue to examine its options, to either withdraw the submittal or pursue a detailed permitting program, and will keep EPA informed of any decisions.

Proposed Action

In this action, EPA is proposing to disapprove revisions to the open burning regulations in the Montana SIP. The disapproval pertains to those revisions made to ARM 16.8.1302 and 16.8.1307, which allow the open burning of creosote-treated railroad ties.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Particulate matter.

Dated: December 20, 1991.

Authority: 42 U.S.C. 7401–7642.

James J. Scherer,

Regional Administrator.

[FR Doc. 91–31302 Filed 12–31–91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[WI14-1-5067; FRL-4090-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve Wisconsin's Statewide Sulfur Dioxide (SO_2) Rules for most sources as a revision to its State Implementation Plan (SIP). The revisions being proposed for approval today consist of: (1) Natural Resources (NR) 417.07—Statewide Sulfur Dioxide Emission Limitations, which contains categorical limits, more restrictive limits, and alternative limits; (2) NR 417.04—Southeast Wisconsin Intrastate Air Quality Control Region (AQCR), which contains restrictions for small sources in Southeastern Wisconsin; (3) new source permits; (4) Administrative Orders; and (5) elective operating permits. USEPA's proposed rulemaking, today, is based upon several submittals from the State.

USEPA is proposing to disapprove Wisconsin's SO_2 plan for some SO_2 sources, because the Wisconsin Department of Natural Resources (WDNR) did not submit site-specific emission limitations and/or compliance methodologies for these sources which provide for attainment and maintenance of the SO_2 national ambient air quality standards (NAAQS).

DATES: Comments on this revision and on the proposed USEPA action must be received by: February 3, 1992.

ADDRESSES: Copies of the SIP revision are available at the following address for review: (It is recommended that you telephone Patrick D. Dolwick, at (312) 886–6053, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible.) Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (5AT–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patrick D. Dolwick (312) 886–6053.

SUPPLEMENTARY INFORMATION: This notice presents a discussion of USEPA's review of Wisconsin's Statewide SO_2 Rules contained in Wisconsin NR Rules 417.07 and 417.04. The outline for the notice is as follows:

I. Background Information
II. Emission Limits
  A. Statewide SO_2 Emission Limitations
  B. Negative Declarations
  C. SO_2 Limitations for Nonattainment Areas
  D. South East Wisconsin Coal Limit
  E. Permit Limitations
III. Compliance Test Methods
IV. Attainment Demonstration
  A. Categorical/More Stringent Limits to Modeling
  1. Prevention of Significant Deterioration (PSD) Increment Analysis
  2. Interstate Impact Analysis
  3. Consistency with Good Engineering Practice (GEP) Regulations
  B. Alternate Limits
V. Summary of USEPA's Proposed Action

I. Background Information

On April 26, 1984, USEPA notified the Governor of Wisconsin under section 110(a)(2)(H) of the Clean Air Act, that the Wisconsin SO_2 SIP was inadequate to ensure the protection of the primary and secondary NAAQS. USEPA concluded that the SIP did not contain SO_2 emission limitations for many sources; nor did it contain schedules and timetables for compliance with such limitations, as required by section 110(a)(2)(B). The finding of SIP inadequacy applied statewide, except for (1) those sources regulated by source-specific New Source Performance Standards (NSPS) (i.e., Wisconsin Public Service (WPS) Weston-UInit 3, Wisconsin Electric Power Company (WEPCo) Pleasant Prairie-Units 1 and 2, Wisconsin Power and Light (WPL) Edgewater-Unit 5, WPL Columbia-Unit 2, Appleton Paper Locks Mill-New Boiler, and Flambeau Paper Boiler 24) and (2) those sources regulated by a USEPA-approved Part D SIP (i.e., Village of Brokaw: Wausau Paper and City of Madison: Madison Gas and Electric Blount Street, Oscar Mayer, University of Wisconsin (UW)-Madison, Wisconsin State Capitol Heating Plant, Wisconsin Department of

Administration-Hillfarms Heating Plant, and Mendota Mental Health Institute).

Wisconsin responded to the notice of SIP deficiency with multiple submittals to USEPA. The Statewide SO_2 Limitation Rule (NR 417.07) was submitted on June 5, 1985, and January 21, 1986. Operating permits were submitted on September 16, 1986, October 3, 1986, and July 20, 1987. Numerous Administrative Orders or elective operating permits containing limits more stringent than those identified in the Statewide Rule were submitted between September 1985 and March 1988. Technical support (consisting of air quality modeling data) was submitted along with the emission limitations.

II. Emission Limitations

The revised SIP is comprised of: (A) Statewide SO_2 Limitations, NR 417.07 (either the categorical limits identified in NR 417.07 (2), more restrictive limits adopted under 417.07 (4), or alternate limits adopted under 417.07 (5)); (B) Sulfur Limitations for specific geographic areas within the State (NR 418.025–08): [1] Brokaw, Madison, Milwaukee, Green Bay, DePere, Peshtigo, Rhinelander, and Rothschild; and (C) Southeast (SE) Wisconsin AQCR coal-fired limit for small sources (NR 417.04); and (D) numerous new source permits. The limits imposed by (A), (C) and (D) above are summarized in Table 1. Each portion of the SIP is reviewed below.

A. Statewide Sulfur Dioxide Emission Limitations (NR 417.07)

(1) Applicability (NR 417.07(1))

Content: This regulation applies to all sources of SO_2 except: (1) Those subject to NR 417.04 or 418 (see footnote 1); or (2) Those subject to a limitation more stringent than the limits identified below.

Action: USEPA proposes to approve the Applicability Section.

(2) Emission Limits for Existing (before February 1, 1985) Sources (NR 417.07(2))

Content: (a) Coal-fired units at facilities with combined coal-firing capacity greater than or equal to 250 million British Thermal Units per hour (MMBTU/HR)—3.2 pounds of SO_2 per million British Thermal Units (lbs/MMBTU);

(b) Coal-fired units at facilities with combined coal-firing capacity less than 250 MMBTU/HR—5.5 lbs/MMBTU;

(c) Residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/HR—1.5 lbs/MMBTU;

(d) Residual oil-fired units at facilities with combined residual oil-firing capacity less than 250 MMBTU/HR—3.0 lbs/MMBTU;

(e) Kraft Mill (all process sources combined)—10.0 pounds of SO_2 per ton (lbs/ton) air dried pulp (ADP);

(f) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP;

(g) Petroleum refinery;

(1) Process heater firing residual oil—0.8 lbs/MMBTU;

(2) Fuel burning equipment firing residual oil—0.8 lbs/MMBTU;

(3) Claus sulfur recovery plant—6743 lbs of SO_2/24-hour, and 843 lbs of SO_2/3-hour;

(4) All other process units—1035 lbs of SO_2/1-hour.

Action: USEPA proposes to approve (a), (b), (c), and (d) above subject to source-specific demonstrations of attainment (see Section IV of this notice). USEPA is proposing to disapprove (g), which applies to only one source (Murphy Oil), because the State has not submitted an attainment demonstration for this source. USEPA is proposing to disapprove (e) and (f), which applies to the following sources:

1. Consolidated Papers (Kraft)
2. Mosinee Paper (Kraft)
3. Nekoosa Papers—Port Edwards (Sulfite)
4. Thilmany Pulp and Paper (Kraft)

USEPA is proposing to disapprove (e) and (f) because the federally enforceable compliance technique, stack test, would not be sufficient to determine compliance with the combined process emission limit. Several of these sources have developed alternative (stack specific) emission limits through either operating permits (Thilmany, Nekoosa Papers-Port Edwards) or the PSD permit process (Consolidated Papers). Mosinee is affected by (e) as well, USEPA is also proposing to disapprove it due to the lack of an acceptable modeled attainment demonstration, as discussed in Section IV.

If in the future the State discovers that any of the limits in NR 417.07 will not protect the NAAQS or PSD increments for a given source, then the State has the authority to develop more stringent limits (pursuant to NR 417.07(4), as discussed below). Any such limit developed must be submitted to USEPA as a site-specific SIP revision.

(3) Emission Limits for New (after February 1, 1985) Sources (NR 417.07(3))

Content: (a) Coal-fired units—3.2 lbs/MMBTU;

(b) Residual oil-fired units—1.5 lbs/MMBTU;

(c) Kraft Mill (all process sources combined)—10.0 lbs/ton ADP;

(d) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP;

(e) Petroleum refinery:

(1) Process heater firing residual oil—1.5 lbs/MMBTU;

(2) Fuel burning equipment firing residual oil—1.5 lbs/MMBTU;

(3) Claus sulfur recovery plant—0.025% by volume SO_2 at 0.0% oxygen on a dry basis if emissions are controlled by a reduction control system followed by incineration; 0.030% by volume of reduced sulfur compounds and 0.0010% hydrogen sulfide if emissions are controlled by a reduction control system which is not followed by incineration.

Action: USEPA proposes to approve.[2]

(4) More Restrictive Emission Limits (NR 417.07(4))

Content: Gives the State the authority to revise State rules to require more stringent emission limits if necessary to ensure no violations of the SO_2 NAAQS or PSD increment.

Action: USEPA proposes. The State must have authority to revise its own rules if necessary to protect the public health or welfare. Of course, all more stringent State limits necessary to protect the NAAQS and PSD increments must still be submitted to USEPA as site-specific SIP revisions. (Note, Administrative Orders containing more stringent emission limitations have been submitted by Wisconsin for several sources as site-specific SIP revisions. USEPA is proposing to approve most of the revisions.)

(5) Alternate Emission Limits (NR 417.07(5))

Content: Established State procedures for sources to obtain relaxed State emission limitations.

Action: USEPA proposes to approve these procedures. Of course, all relaxed State limits must still be submitted to USEPA as site-specific SIP revisions, also, the previous limit is enforceable

[1] This rulemaking notice is taking no action on the overall plan for Wisconsin's nonattainment areas.

[2] Any new source, based on size capacity, will be also subject to applicable new source review requirements, including PSD and New Source Performance Standards (NSPS). The controlling limit, thus, will be whichever is the more stringent. Emission controls for new sources may also have to meet more stringent best available control technology (BACT) or lowest achievable emission rate (LAER) requirements.

until the relaxed rule is federally approved by USEPA.

(6) Compliance Schedules (NR 417.07(6))

Content: Established schedules for achieving final compliance and the date for final compliance. All sources must be in final compliance by December 31, 1987.

Action: USEPA proposes to approve. Schedules and final dates are already past and, thus, are now no longer an issue (i.e., sources must be in compliance upon the effective date of Federal approval).

(7) Compliance Demonstrations (NR 417.07(7))

(a) *Content:* Requires each source to submit a plan for demonstrating compliance based on one or more of the following methods—stack tests, fuel sampling and analysis, continuous emission monitoring, or other methods approved by the State.

Action: USEPA proposes to approve Wisconsin's procedures for developing site-specific compliance methodologies. The individual compliance plans themselves must still be submitted to USEPA in order to revise the federally approved SIP. USEPA will then have the opportunity to approve or disapprove any methods approved by the State. Regardless of the specific compliance methodology chosen by a source, Wisconsin's SIP contains an independently enforceable stack test and that remains the primary Federal methodology for determining compliance unless and until Wisconsin submits and USEPA approves any alternatives.

(b) *Content:* Requires each source to maintain records of emissions data and calculations used to verify emissions data and to make records available upon request.

Action: USEPA proposes to approve. However, this provision is being relied on to require recordkeeping and reporting for several sources subject to a restriction on boiler operation or operating load. USEPA finds it necessary that the following sources be subject, at a minimum, to the recordkeeping requirements listed as follows:

1. Hourly records of fuel type—National Presto, Pope & Talbot—Eau Claire, Ansul Fire Protection, Kearney & Trecker, Koch Fuels, Allied Processors, and Beatrice Grocery;

2. Hourly records of actual heat input—Falls Dairy, Rexworks, and Greenwood Milk;

3. Records of hourly operating load and emissions in terms of lbs/MMBTU (obtained through either daily fuel sampling analysis or continuous emission monitoring)—Badger Army Ammunition Plant and Milwaukee County Department H&HS;

4. Hourly records of both fuel type and emissions in terms of lbs/MMBTU (obtained through either daily Fuel Sampling Analysis or continuous emission monitoring)—Colt Industries.

This information is needed to determine compliance (or non-compliance) with the proposed emission limitations for these sources. Therefore, USEPA is proposing to disapprove Wisconsin's plan for these sources because the plan does not contain adequate recordkeeping requirements for these sources.

Note, Ansul Fire Protection, Badger Army Ammunition, Colt Industries, and Milwaukee County Department H&HS have variable emission limitations. USEPA is considering whether advance notification (prior to switching limits) and other additional requirements are necessary for enforcement purposes. USEPA solicits comment on the need for such notification or other requirements.

(8) Variance from Emission Limits (NR 417.07(8))

Content: Establishes State procedures for sources to obtain alternate State emission limitations and/or revised compliance schedules.

Action: USEPA proposes to approve these procedures. Any relaxed State limit or schedule must still be submitted to USEPA in order to revise the federally approved SIP.

(9) Subsequent Requests for Alternate Limits or Variances (NR 417.07(9))

Content: This subsection defines specific time periods for sources to obtain variances and alternate limits. Revisions are not available in 1986 and 1987.

Action: By letter dated December 15, 1989, Wisconsin withdrew this subsection from further SIP review. Thus, USEPA is not proposing action on this section. The State and USEPA understand the withdrawal to mean that all state issued SO_2 variances must be submitted to USEPA in order to revise the federally approved SIP.

B. Negative Declarations

The States submitted "negative declarations" for certain sources with respect to NR 147.07. Negative declarations are declarations which either impose fuel type restrictions (i.e., cannot burn residual oil or coal) on certain sources or identify other sources as being shut down or permanently closed. USEPA is proposing to include these negative declarations into the SIP. These sources are listed in Table 2.

C. Sulfur Limitations for Nonattainment Areas

These are covered in separate rulemaking packages for each area and are not discussed here.

D. South East Wisconsin Coal Limit (NR 417.04)

Content: Coal-fired units (at facilities with combined coal-firing capacity less than 250 MMBTU/hr) are limited to 1.11 pounds of sulfur per MMBTU (2.22 lbs of SO_2 per MMBTU). Significant sources affected by county are: Racine County—Frank Pure; Kenosha County—American Motors Lakeside; Milwaukee County—Milwaukee House of Correction, Cudahy Tanning, Continental Can, and Falk (B20).

Action: USEPA proposes to approve this, based on the source-specific or county-specific demonstrations of attainment submitted (see Section IV of this notice).

E. Permit Limitations

The following sources are covered by operating permits or PSD permits which impose emission limitations that are more stringent than the general limits in NR 147.07:

District	County	Source (* = PSD)
West Central	Clark	Greenwood Milk (B20, 21).
		Lynn Proteins (B21).
	Dunn	Allied Processors (B21).
North Central	Portage	Neenah Paper-Whiting (B01).
	Wood	CPI-Biron,* CPI-Kraft.*
Northwest	Douglas	Koppers (B22).
	Price	Flambeau Papers (Pulp Mill).*
Southeast	Milwaukee	Peter Cooper.
	Racine	J.I. Case.
	Sheboygan	Borden.

Action: PSD permits have already been granted. Each source is subject to source-specific demonstration of attainment.

(Note, the following sources are subject to Federal NSPS requirements: WPL–Columbia (Unit 2), Appleton Papers-Locks Mill (New Boiler), WEPCo–Pleasant Prairie (Units 1 and 2), Flambeau Papers (B24), WPL–Edgewater (Unit 5), and WPS–Weston (Unit 3)).

III. Compliance Test Methods

The Wisconsin SIP currently contains Section NR 154.06 (renumber NR 439) of the Wisconsin Administrative Code.[3] Section NR. 154.06 requires:

(1) Reporting to "information to locate and classify air contaminant sources according to the type, level, duration, frequency and other characteristics of emissions and such other information as may be necessary. The information shall be sufficient to evaluate the effect on air quality and compliance with these rules."

(2) Stack or performance tests following the methods required or approved by USEPA.

(3) Recordkeeping and reporting of all testing and monitoring, and any other information relating to the emission of air contaminants.

On May 28, 1987, WDNR notified USEPA that the stack test methodology existing in the Wisconsin SIP remains an independent means of demonstrating compliance. Although WDNR has also required development of site-specific compliance plans for all sources subject to NR 417.07 (see NR 417.07(7)), the State has made it clear to USEPA and to each company that regardless of a source's compliance status as determined by the source's site-specific compliance methodolcgy, a stack test can still be used as an independent method to determine whether a violation of the applicable emission limitation has occurred.[4] USEPA accepts the use of a stack test as the sole compliance test method for most sources. (Note, the State's site-specific compliance plans were not submitted as revisions to the SIP and, thus, are not being proposed as a part of the SIP.)

For several sources, however, the State's control strategy is based on certain conditions in addition to the "lbs/MMBTU" emission limitation. These conditions consist of stack height increases/stack mergings, restrictions on operating load, boiler operation, limits as a function of operating load, etc. For the operating/load conditions, recordkeeping and reporting requirements will be required pursuant to NR 417.07(7)(b) and the general requirements of NR 154.06 (now NR 439), as noted previously. For the stack modifications, WDNR on August 21, 1987, stated that all stack height increases, new stacks, or stack mergings have already occurred.

IV. Attainment Demonstration

The State performed dispersion modeling to verify the adequacy of the categorical emission limits (NR 417.01(2)) or to establish more stringent limits in accordance with a modeling protocol approved by USEPA. To support alternate emission limits (i.e., higher than categorical), each company was required to perform a modeled attainment demonstration. These demonstrations generally followed the generic State-USEPA protocol and USEPA modeling guidelines, including block averaging for the 3-hour and 24-hour SO_2 NAAQS.[5]

A. Categorical/More Stringent Limits to Modeling

For screening analyses, the Point Source Gaussian Diffusion Model (PTPLU)[6] or VALLEY was used and, for refined analyses, the Industrial Source Complex Short Term Model (ISCST) was used. (Note, in Milwaukee, ISCST urban was used.) Several comments on the modeling analyses should be noted. First, the State's attainment demonstration for the Wisconsin's Public Service Weston plant in Marathon County relied on both modeling and monitoring data. The USEPA reference model (ISC) was used to show attainment at receptor locations below the physical stack heights. Monitoring data was used to assess the validity of the available models and to show attainment at the critical terrain feature above the physical stack height. USEPA proposes to accept this combined use of modeling and monitoring data to demonstrate attainment here.

Second, the State's modeling for the following sources predicted violations of the SO_2 NAAQS.

University of Wisconsin—Milwaukee
Southern Wisconsin Center
Outboard Marine Corporation—Evinrude
S.C. Johnson
Menasha Electric
Plastics Engineering
American Milk Products—Blair Cheese
Richland Center Municipal
Appleton Papers—Appleton
Ore Ida
Consolidated Papers—Wisconsin River Division
Mosinee Papers
Allis Chalmers

To correct these violations, operating restrictions or additional emission limitations were developed. The conditions were only included in the State's compliance plans, which as noted above will *not* be included in the SIP, in accordance with a mutual agreement between USEPA and the State. Without these conditions, the proposed regulation does *not* ensure attainment of the SO_2 NAAQS. USEPA proposes to disapprove the State's regulation for these sources based on the modeled violations.

Third, the State's plan for American Motors-Kenosha (Main) and Northern States Power-Ashland is not approvable because: (1) The modeling analysis is deficient (e.g., not all allowable emission limits were modeled), and (2) a compliance methodology capable of accounting for the wide variability in emission limitations was not provided. USEPA proposes to disapprove the State's regulation for these sources based on a deficient attainment demonstration and a deficient compliance methodology.

1. PSD Increment Analysis

Pursuant to USEPA's PSD regulations, SIP relaxations submitted after June 19, 1978, must be evaluated for increment consumption. Because this SIP revision establishes emission limitations where, is general, none now exist, no increment analysis is required. (Note, the State did consider whether their allowable emission limits would exceed actual baseline emissions in those counties where the baseline data had been triggered. This preliminary analysis identified no serious threat to the available increment in the baseline counties.)

2. Interstate Impact Analysis

The Clean Air Act requires that the Wisconsin SIP not allow emissions which will prevent attainment or maintenance of the NAAQS in any other State. Generally, Gaussian models are accurate for setting emissions for a

[3] References to the Wisconsin SIP are found at 40 CFR 52.2570.

[4] In a May 28, 1987, letter, WDNR's states that a compliance demonstration method other than a stack test does not insulate the source from a compliance stack test required or conducted by WDNR and USEPA. In fact, in approving compliances plans, the WDNR has included a notice to the source that a source can be required to perform a compliance stack test "regardless of a source's compliance status as determined by the source's site specific compliance methodology in the approved plan."

[5] The modeling techniques used in the demonstrations supporting these regulations are based on the modeling guidelines in place at the time that the analyses were performed (i.e., "Guideline on Air Quality Models", April 1978 and "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981). Since that time, revisions to the modeling guidelines have been promulgated ("Guideline on Air Quality Models (Revised)", July 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987). Because the modeling was initiated and generally completed prior to these revisions of the guidelines, USEPA accepts the analyses as they stand.

[6] Gaussian is a statistical term for a normally distributed curve.

maximum useful distance of 50 km.[7] Sources within 50 km of another State are located in 27 counties—the 26 counties on the northern, western, and southern edge of the State, plus Racine County. For the 26 border counties, the State's analyses either: (1) Demonstrated attainment at receptors located in the other State, or (2) implied attainment in the other State (e.g., modeled attainment in Wisconsin, decreasing concentration gradient in the direction of the other State, and no other sources between those modeled in Wisconsin and the other State). Racine County sources are indirectly included in the Kenosha County analysis via the monitored background concentrations, thus, the Kenosha County interstate impact analysis also serves as the Racine County analysis.

3. Consistency with GEP Regulations

USEPA's July 8, 1985, stack height regulations apply to stacks (and sources) which came into existence and dispersion techniques implemented on or after December 31, 1970.[8]

Stack height credit for the purpose of establishing an emission limitation is restricted to the lesser of actual or good engineering practice (GEP) formula height. Credit for merged stacks is generally prohibited, with the following four exceptions:

(1) Where total plantwide allowable SO_2 emissions do not exceed 5000 tons per year.

(2) Where the facility was originally designed and constructed with merged gas streams.

(3) Where such merging was before July 8, 1985, and was part of a change in operation that: (i) included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and (ii) did not result in an increase in the emission limitation or (if no limit was in existence prior to merging) in the actual emission, or

(4) Where such merging was after July 8, 1985, and was part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions for the pollutant affected by the change in operation.

Wisconsin's stack height review for all areas (except Buffalo County, Green Bay/DePere, Peshtigo, Rhinelander, and Rothschild) is summarized below.

There are 52 stacks that exceed 213 feet. Wisconsin certified that 41 stacks were in existence before December 31, 1970 (based on information in State case files, knowledge by State personnel, or discussions with individual companies) and nine stacks are at or below the GEP formula height (based on plot plans available in State case files). The remaining two stacks are:

(1) University of Wisconsin-Madison (Walnut Street): The State remodeled this stack at the GEP formula height. Although no violations were predicted due to this source, violations were predicted due to the UW-Madison (Charter Street) plant. A revised limit of 3.18 lbs/MMBTU appeared to be required for UW-Madison (Charter Street). On October 17, 1986, the State submitted an Administrative Order as a site-specific SIP revision for UW-Madison (Charter Street). USEPA proposes to approve this limit, 3.18 lbs/MMBTU, as part of Wisconsin SIP.

(2) Wisconsin Power & Light-Columbia: The State remodeled the stack for Unit 2 at the GEP formula height. This analysis showed attainment of the NAAQS with Unit 2 at the categorical limit (3.2 lbs/MMBTU) and GEP formula height.

There are 27 sources with plantwide allowable SO_2 emissions greater than 5000 tons per year. Wisconsin certified that there is one stack per unit at two facilities, that a stack was originally designed and constructed with merged gas steams at one facility, and that stacks serving multiple units were in existence before December 31, 1970 at 18 facilities (based on information in State case files, knowledge by State personnel, or discussions with individual companies). The remaining 6 facilities are:

(1–3) Wisconsin Power & Light-Edgewater; Consolidated Papers-Kraft; and Mosinee Papers: No justification provided for merged stacks. Edgewater and CPI-Kraft were modeled without merged stack credit. USEPA proposes to disapprove the State's plan for Mosinee Papers because the State's attainment demonstration inappropriately relied on merged stack credit.

(4) Consolidated Papers—Biron: Installation of nozzles on the two stacks was found to not result in an increase in final plume rise.

(5) Oscar Mayer: On October 17, 1986, the State submitted an Administrative Order as a site-specific SIP revision for Oscar Mayer of 4500 tons per year (in addition to Oscar Mayer's federally enforceable emission limitations approved by USEPA on April 9, 1981, (46 FR 21165) and April 13, 1982, (47 FR 15783). Thus, merged stack credit can be granted. USEPA proposes to approve this limit as part of the Wisconsin SIP.

(6) Owens-Illinois: On March 1, 1988, the State submitted information provided by Owens-Illinois which attempts to affirmatively demonstrate that merged stacks were not significantly motivated by an intent to obtain emissions credit for increased dispersion. This information consisted of affidavits by plant personnel, State construction and operating permits, internal company memos, and correspondence between the State and company. Based on this affirmative demonstration, USEPA proposes to approve credit for merged stacks for this source.

In addition, the control strategy for several sources involves stack height increases or stack mergings. A summary of these cases is provided below.

National Presto, Chippewa County (raise 2 stacks to 55 feet or restrict boiler operation)

Bush Bros, Eau Claire County (raise 2 stacks to 75 feet)

Beatrice Cheese, Wood County (raise 1 stack to 83 feet)

Niagara of Wisconsin, Marinette County (raise 1 stack to 191.3 feet)

Midtec Papers, Outagamie County (raise 1 stack to 120 feet)

Gilbert Papers Winnebago County (raise 1 stack to 200 feet)

Kimberly Clark-Neenah, Winnebago County (raise 2 stacks to 60 feet)

Thilmany Paper, Outagamie County (raise 1 stack to 290 feet)

Waste Research & Reclamation, Eau Claire County (combine 2 stacks to 1–60 foot stack)

Kimberly Clark-Lakeview, Winnebago County (combine 2 stacks to 1–46 foot stack)

Consolidated Papers-Kraft, Wood County (vent Rec Boiler No. 1 exhaust from 90.8m stack to new 91.2m stack)

Pope & Talbot-Eau Claire, Eau Claire County (raise 2 stacks to 213 feet)

All of the stack height increases (new taller stack for existing units(s)), except Thilmany Papers, are fully creditable because either the new stack is less than or equal to the *de minimis* height (213 feet), or the modeled stack height is limited to the grandfathered height. The stack height increase at Thilmany

[7] References to the 50 km limit are in "Guideline on Air Quality Models (Revised)", EPA-450/2-78-027R7-86.

[8] Certain provisions of these rules were remanded to *USEPA in NRDC* v *Thomas* 838 F. 2d 1224 (D.C. Cir 1988). These are grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height (40 CFR 51.100 (kk) (21)), dispersion credit for sources originally designed and constructed with merged or originally designed and constructed with merged or multi-flue stacks, (40 CFR 51.100 (hh) (2) (ii) (A)), and grandfathering credit for the refined (H + 1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51 100(ii)(2)).

Papers occurred after October 11, 1983. According to the Stack Height Regulations, credit for a stack height increase up to formula height after this date must be supported by evidence that additional stack height is necessary to avoid down wash-related concentrations raising health and welfare concerns. Based on a fluid modeling study performed by the company which demonstrated excessive concentrations at the existing stack height, USEPA is proposing to approve the additional stack height credit at Thilmany Papers. The two stack mergings (Waste Research & Reclamation and Kimberly Clark—Lakeview) are fully creditable because the plantwide allowable SO_2 emissions for these two sources are less than 5000 tons per year.

USEPA is proposing to approve all of the above as meeting the requirements of USEPA's July 8, 1985, stack height regulations. However, CPI-Biron, Wisconsin Electric Power Company-Pleasant Prairie, WPL-Columbia), provisions under which USEPA is proposing to approve granting credit have been remanded to the USEPA.[9] The grandfathering of GEP formula height credit for pre-1983 stack height increases (40 CFR 51.100(kk)(2)) is applicable to Edgewater and Biron, grandfathering credit for the refined GEP formula height (40 CFR 51.100(ii)(2)) is applicable to Columbia, and the original design and construction exemption (40 CFR 51.100(hh)(2)(ii)(A)) for merged stacks is applicable to Pleasant Prairie.

Although USEPA today proposes to approve the emission limits for these sources on the grounds that they satisfy the applicable Section 110 requirements of the Clean Air Act, USEPA also today provides notice that the emission limits are subject to review and possible revision as a result of *NRDC* v. *Thomas*, 838 F.2d 1224 (1988), where the U.S. Court of Appeals for the D.C. Circuit held that USEPA had not adequately explained certain provisions of its July 8, 1985, regulations and remanded these provisions to USEPA for further proceedings consistent with its opinion. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Wisconsin whether the emission limit for Edgewater, Biron, Pleasant Prairie, and Columbia must be reexamined for consistency with the modified provision. USEPA's proposed approval for these facilities' emission limits today is intended to avoid delay in the establishment of federally enforceable emission limits, while awaiting resolution of the *NRDC* remand.

Finally, as part of WDNR's stack height review, numerous other sources have already been determined to be exempt from the Stack Height Regulations (i.e., mergings at plants with total allowable emission less than 5000 tons per year and stack height increases or new stacks less than 213 feet). (Note, there are stack height issues associated with some sources covered by NR 418, which will be addressed in the technical support documents for each area.)

The only alternate limits (higher than categorical) submitted by WDNR are for the following sources:

Consolidated Papers—Biron
Thilmany Papers
Pope & Talbot—Eau Claire
Owens—Illinois
Dairyland Power—Genoa
Wisconsin Power & Light—Edgewater

Modeling to support the alternate limits was provided by WDNR. USEPA's review and acceptance of this modeling is discussed in USEPA's Technical Support Document. In general, the modeling, performed in accordance with the applicable guidelines, demonstrates that the higher limits will provide for attainment and maintenance of the SO_2 NAAQS. USEPA is, therefore, proposing to approve the limits for each source.

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS

County	Source	Emission limitation [10]
West Central District:		
Chippewa	Genstar	B21 (3.0), B22 (3.0).
	Falls Dairy	Proposed Disapproval.
	Leinenkugel's	B20/S10 (3.61).
	National Presto	Proposed Disapproval.
	North Wisconsin Center for Develop Disabled	B20,21,22/S10 (4.2), B23/S10 (3.0).
Clark	Greenwood Milk	Proposed Disapproval.
	Lynn Proteins	B20 (3.0), B21 (1.5% S).
Crawford	Iverson Number 6	Burne (3.0).
Dunn	Allied Processors	Proposed Disapproval.
	Beatrice Grocery	Proposed Disapproval.
	Knapp Creamery	B20 (3.0).
	UW-Stout	B21,22 (5.5).
Eau Claire	Bush Brothers	B20 (3.0) stack raised to 75 feet and B21 (3.0) stack raised to 75 feet.
	Eau Claire Asphalt	Boiler number 1 (3.0).
	Luther Hospital	B23,24 (3.0).
	Pope & Talbot-Eau Claire	Proposed Disapproval.
	Uniroyal	B20,21/S 10 (2.25).
	UW-Eau Claire	B20,21/S (4.5), B22/S 18 (3.0).
	Waste Research & Reclamation	B20/S 18 (2.3)}, B21/S 19 (2.3)}, stacks merged to new 60 foot stack.
Jackson	South Alma Cheese	B22 (3.0), B23 (3.0).
LaCrosse	Holy Cross Seminary	B20,21 (5.5).
	Trane 2-5, 7	B21/S 52 (cannot burn coal), B22/S 53 (4.36), B23/S 54 (4.36), B24/S 55 (4.36), B20/S 10 (1.5) or (1 78) if load restricted to 29 MMBTU/hr, record-keeping required.

[9] As stated earlier, certain provisions of these rules were remanded to USEPA in *NRDC* v *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). These are: grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height [40 CFR 51.100(kk)(2)]; dispersion credit for sources originally designed and constructed with merged or multi-flue stacks [40 CFR 51.100(hh)(22)(ii)(A)]; and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula [40 CFR 51.100(ii)(2)].

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [10]
	Trane 6	B20/S 10 (5.5), B21/S 11 (0.6) or (1 75) if restricted to combined 12 MMBTU/hr B22/S 12 (0.6) or (1.75) if restricted to combined 12 MMBTU/hr recordkeeping required.
	Webster Industries	B24 (3.0).
	Saint Rose Convent	S10 (3.0).
	UW-LaCrosse	B20,21 [(3.65) coal, (1.99) oil]
	G. Heileman	B20,21 (2.15), B25 (2.15).
Monroe	Fort McCoy	Boilers 1-3 (3.2).
	Golden Guernsey	B22/S13 (1.73).
Pepin	None.	
St. Croix	Domain	B20 (3.0), B21 (3.0).
	Friday Canning	B20 (3.0).
Trempeauleau	AMP-Blair Cheese	Proposed Disapproval.
Pierce	UW-River Falls	B20,21 (5.5).
Vernon	Dairyland Power-Genoa	B20/S10 [(5.6) 24-hour average, (5.5) 30-day average].
North Central District:		
Adams	None	
Forest	None.	
Juneau	None.	
Langlade	None.	
Lincoln	Owens-Illinois	B24,27,28 (5.5), B25 (1% S) and 84.59 pounds/hr (oil firing restricted to 60 MMBTU/hr), B29 (1% S).
	Ward Paper	B20,21/S10 (5.5).
Marathon	Mosinee Papers	Proposed Disapproval.
	Weyerhaeuser/Reed Lignin	Subject to NR 154.12 (10).
	WPS-Weston	B20/S10 (3.2), B21/S11 (3.2), B22/S12 (1.2).
	Wausau Paper	Subject to NR 154.12 (4).
Oneida	McNaughton Correctional Center	Boiler 1 (3.0).
	Rhinelander Papers	Subject to NR 154.12 (9).
Portage	American Potato	Boiler 1 (3.0).
	CPI-Wisconsin River Division	Proposed Disapproval.
	Del-Monte	B01 (0.19), B02 (0.19).
	Neenah Paper	B21/S10 (3.0).
	Whiting	B01/S01 (55 lbs/hr).
	Ore-Ida	Proposed Disapproval.
	SNE-Stevens Plant	B20/S10 (5.5).
	UW-Stevens Plant	B01,02/S10 (5.5).
Vilas	None.	
Wood	Beatrice Cheese	Boiler 1 (3.0) new 83 feet stack.
	CPI-Biron	B005 (1.2) operates with either B001, 2, 3 or B004; B001, 2, 3 (6.0), B004 (6.0).
	CPI-Kraft	P30/S13 (40 parts per million dry volume (ppmdv), 6.9 lbs/hrs)—new 65 m stack, Number 3 Recovery boiler (158 ppmdv, 114.6 lbs/hr)—new 91.2 m stack P38/S 21 (24 ppmdv, 2.3 lbs/hr), Numbers 1,2 Power Boilers (1.71), Number 1 Recovery boiler (5 lbs/Ton ADP)—to be vented to new 91.2 m stack, Number 2 Recovery boiler (5 lbs/Ton ADP), Numbers 1,2 smelt Dis. Tanks (0.1 lbs/Ton ADP) new 63.4 m stack.
	Nekoosa Papers	B20,21,24/S 10 (3.0).
	Port Edwards	B25/S 13 (3.0), P30/S 11 (1633 lbs/hour, 24-hour average), Misc. Process Sources (12.1 lbs/hour, 24-hour average).
	St. Joseph Hospital	B01,02 (5.5), B03,04 (3.0).
Northwest District:		
Ashland	Northern States Power	Proposal Disapproval.
Barron	AMPI-Turtle Lake	B20 (3.0), B21 (3.0).
	Morning Glory Farms	Boilers 1,2 /S 11 (5.5).
	Seneca Foods	B10/S 10 (1.5), B11/S 11 (0.5% S), B20, 21, 22 to be shutdown recordkeeping/reporting required, B10 can only burn oil from June-October (limited to 4575 gal/day).
Bayfield	None.	
Burnett	Burnett General Hospital	B20,21 (3.0), B22 (3.0).
Douglas	Middle River Health Facility	B20,21 (5.5).
	Parkland Health Facility	B21,22 (5.5).
	Koppers	B22/S 11 (2% S), B21 (3.0).
	UW Superior	B20,21 (5.5).
	Superior WL&P	B20,21 (1.5).
Iron	None	
Polk	Wisconsin Dairies	B20/S 10 (1.21), B21/S 11 (1.21), B22/S 12 (1.21)
Price	Flambeau Papers	B20 (1.5), B22 (1.5), B23 (1.5), B24 (1.2), Pulp Mill (65.4 lbs/hr).
	Lionite Hardboard	B20/S 10 (1.13).
Rusk	Norco Windows	B20,21 (5.5).
Sawyer	None.	
Taylor	None.	

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [10]
Washburn	None.	
Southern District:		
Columbia	Davis Construction	Burner (3.0).
	NE Asphalt 52	Burner (3.0)
	Wisconsin Power & Light Columbia	Unit 1 (3.2), Unit 2 (1.2), [Also, combined emissions restricted to 15,200 lbs/hr (3-hr average) and 12,500 lbs/hr (24-hr average)].
Dane	Capital Heating Plant	Subject to NR 154.12(5).
	Consolidating Paving	Burner (3.0)
	Delltown Chemurgic	B21, 22, 23/S 11 (3.0)
	DRS Services	Burner (3.0)
	Hillfarm Heating Plant	Subject to NR 154.12(5).
	Mendota Mental Health	Subject to NR 154.12(5).
	MGE-Bount Street	Subject to NR 154.12(5).
	Oscar Mayer	Subject to NR 154.12(5), July 22, 1986, Administrator Order, and 47 FR 15783.
	Payne & Dolan 6-Deforest	Burner (3.0).
	Payne & Dolan 32-Verona Road	Burner (3.0).
	UW-Madison Walnut Street	Subject to NR 154.12(5).
	Webcrafters	B20/S12 (3.0).
	UW-Charter St.	(3.18).
Dodge	Amber Labs (Universal Foods)	B22/S 10 (1.5), B21/S 11 (0.5).
	John Deere	Boiler 1 (1.33), Boiler 2 (1.33), Boiler 3 (1.33).
	NE Asphalt Horicon	Burner (3.0).
	Waupun Corr Institute	B21,22,23/S 10 (5.5).
Grant	DP-Stoneman	B21, 22/S 11 (2.81).
	Iverson 4, 5	Burner (3.0), Burner (3.0).
	UW-Platteville	B22, 23 (5.5).
	WPL-Dewey	B21, 22/S 11 (3.2).
Green	Iroquis Fndy	P31/S 11 (0.75).
Iowa	Stokeley-Cobb	B21, 22, 23/S 10 (5.5).
Jefferson	Carnation	B21/S 11 (0.58), B22/S 12 (0.58).
	Stoppenbach	B21/S 11 (5.5).
	Lake Mills Blacktop	Burner (3.0).
	UW-Whitewater	B20, 21/S 10 (5.5).
Richland	Richland Center Municipal	Proposed Disapproval.
Rock	Beloit Corporation	B20, 21, 22/S 10 (3.0).
	Colt Industries	Proposed Disapproval.
	Frank Brothers	Burner (1.42).
	General Motors	B21,22,23,24,25/S 12 (3.0).
	Hormel	B20/S 10 (0.65), B21/S 11 (0.65), B22/S 12 (0.65).
	WPL-Blackhawk	B23,24/S 10 (3.2).
	WPL-Rock River	B21/S10 (0.32), B22/S11 (3.2).
	Rock Road Con	P01/S01 (0.348).
Sauk	Grede Foundries	Furnace (5.5).
	U.S. Badger Ammunition Standby Mode	Mobilized Mode B01/S01.
	Off	(0.5) B05/S05, off (0.5), B06/S06.
	(1.5)	(0.5) B09/S09.
	(1.5)	(0.5) B10/S10.
	Off	(2.58) B13/S13.
	Off	(2.58) B14/S14.
	(1.5)	(0.5) B16/S16.
	(1.5)	(0.5) P02/S19.
	Off	Uncontrolled P06/S23.
	Off	95 percent control.
Fond du Lac	N.E. Asphalt Eden Burner	Burner (3.0).
	N.E. Asphalt Ripon Burner	Burner (3.0).
	Wisconsin State	B20/S10 (1.6).
	Taycheedah.	
Green Lake	Berlin Foundry	P31/S10 (1.19).
	Berlin Tanning	B10/S10 (2.28).
Marquette	None.	
Lafayette	None.	
Lake Michigan District:		
Brown	Green Bay Institute	S10 (5.5).
	Green Bay Packaging	NR 154.12(7).
	Fort Howard	NR 154.12(7).
	James River	NR 154.12(7).
	Nicolet Paper	NR 154.12(7).
	P&G-East River	NR 154.12(7).
	P&G-East River	NR 154.12(7).
	St. Vincent Hosp	B24/S10 (3.0).
	WPS-Pulliam	NR 154.12(7).
	Koch Fuels	Proposed Disapproval.
Calumet	None.	
Door	None.	
Florence	None.	
Manitowoc	Manitowoc Co-S Work	B20,21/S10 (3.38) (Coal).

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [10]
	Manitowoc Co	B23/S15 (1.5% S), B20,21,22→249 T/Y (combined), B20/S10, B20/S11, B22/S12 (1.18) (each), 70 gal number 6 oil/hr (each).
	Manitowoc Public Utility	B25 (3.2), B26 (3.2), B27 (3.2).
Marinette	Ansul Fire Protection	Proposed Disapproval.
	Badger Papers	NSR 154.12(8).
	Niagara of Wisconsin	Boiler 1-3/S 11 (3.2), Boiler 4/S 12 (3.2)-raise stack to 58.m.
	Scott Paper	Boiler #5 (5.5).
Menominee	None.	
Oconto	Scott Papers	B26/S10 (5.5).
Outagamie	Appleton Papers Appleton	Proposed Disappproval.
	Appelton Papers-Locks Mill	Boilers 7, 8, 9, (1.5), Boiler-new (1.2).
	Fox River Papers	B21 (1.19), B22 (3.0).
	Kerwin Papers	B20 (5.5).
	Midtec Paper	B21, 22 (3.2), B23 (1.5), B24 (1.5)-raise stacks to 120 feet.
	Sanger Powers Correctional Center	B01, 02/S1 (2.90) (Coal).
	Thilmany Papers	B07/S7, 92.7 lbs/24 hr, B08/S8, B10/S10 (466.3 lbs/24 hours), B09/S9, B11/S9 (7.0), B09/S09 and B11/S09 (865.4 pounds/ 24hrs if stack height ≥290 feet (1.7)-if 175 feet <stack height <290 feet, Also: Numerous fuel type restrictions.
Shawano	Shawano Papers	S10 (3.0), S12 (3.0).
Waupaca	FWD	B21/S11 (0.95) (residual fuel oil), B22/S12 (0.95) (residual fuel oil), B23/S13 (0.95) residual fuel oil).
Waushara	None.	
Winnebago	Gaffoway	Stack 1 (3.0), Stack 2 (3.0).
	Gilbert Paper	B22, 23/S10 (3.2) (Coal), B24 (3.0)-stack height>200 feet), B24 (2.0)-80 feet<stack height<200 feet), B25 (0.5).
	Kimberly Clark-Lakeview	Stack #1 (3.0), Stack #5 (3.0)—merge into existing 46 foot stack.
	Kimberly Clark-Neenah	B21/S11 (0.35—raise stacks to 60 feet, B22/S12 (0.35)-raise stacks to 60 feet.
	Menasha Electric	Proposed Disapproval.
	PH Glatfelter	Boiler 1 (1.5) (number 6 oil), Boilers 2-4 (1.5) (number 6 oil).
	US Paper Mills	B21/S10 (4.22) (Coal).
	UW-Oshkosh	S10 (5.5) categorical limit (Coal).
	Winnebago Mental Health	S10 (5.5) categorical limit (Coal).
	Neenah Foundry	P30, 31 (5.5)—Cannot operate simultaneously, P32, 78 (5.5)—Cannot operate simultaneously.
Southeast District:		
Kenosha	American Brass	B20,21,22 (3.0), B23 (3.0).
	AM Motors Lakeside	B20,21,22 (2.22).
	AM Mortors Main	Proposed Disapproval.
	UW-Parkside	B20,21,22,23/S10 (0.57).
	WEPCo-Pleasant Prairie	B20,21 (1.2).
Milwaukee	A.O. Smith	S13 (1.72).
	Acme Galvanizing	P30/S12 (3.0), P31/S13 (3.0).
	Aldrich	B20,23/S10 (3.0).
	Allen Bradley	B20/S10 (3.0).
	Allis Chalmers	Proposed Disapproval.
	Amercian Can	B20/S19 (1.32), B21,/S20 (1.32), B22/S18 (1.32).
	AM Motors-	B20/S10 (0.79) 24 hour/(3.0) 3-hour.
	Milwaukee	B22/S10 (0.79) 24 hour/(3.0) 3-hour, B23/S22 (1.33) 24 hour/(3.0) 3-hour.
	Continental Can	B22 (2.22).
	Cudahy Tanning	B20 (2.22), B21 (2.22).
	Eaton/Cutler	B20,21,22/S10 (1.51).
	Falk	B20 (2.22), B21 (3.0), B22 (3.0).
	General Electric	B20,21,22/S11 (3.0).
	JC Penney	B20,21 (3.0).
	Kearney & Trecker	Proposed Disapproval.
	Ladish	B20,21/S10 (3.0), B23,22/S14 (3.0).
	Miller Brewing	S10/(1.5).
	Milwaukee County Institution	B21/S11, B22/S12, B23/S13 (1.85), B21/S11, B22/S12 (2.729), B22/S12, B23/S13 (2.7290, B21/S21, B23/S23 (2.729).
	Milwaukee House of Correction	B20 (2.22), B21 (2.22).
	OMC-Evinrude Foundry number 2, 5	Proposed Disapproval.
	Pabst	S10 (1.5).
	Patrick Cudahy	B20/S10 (2.78), B22/S11 (2.78), B24/S14 (2.78).
	Peter Cooper	B22 (1.9), B23 (1.9), restricted to 86 pounds/ MMBTU, recordkeeping required.
	Pfister & Vogel	B20/S10 (3.0).
	Rexworks	Proposed Disapproval.
	Safeway Steel	B20/S10 (3.0).
	Unit Drop Forge	B20/S10 (3.0), B21/S11 (3.0).

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [10]
	Universal Food (Red Star Yeast)	B20,21,22/S10 (3.0).
	UW-Milwaukee	Proposed Disapproval.
	Vilter-Manufacturing	B20/S10 (1.28), B21/S11 (1.28).
	WEEPCo Oak Creek	S11 (3.2), S12 (3.2), S13 (3.2), S14 (3.2).
	WEPCo-Valley	Subject to 154.12(6).
	Wisconsin Paperboard	B20/S10 (3.0).
Ozaukee	WEPCo	B24,25/S16 (3.2).
	Port Washington	B21,22,23/S17 (3.2).
Waukesha	None.	
Washington	Carbon Engineering	B20 (5.5).
Sheboygan	Borden	B21/S10 (1.75%)→, B21/S11 (1.75%)→ can not operate boilers simultaneouly on number 6 oil; recordkeeping required.
	Kohler	B20,22,23 (3.0).
	Plastics Engineering	Proposed Disapproval.
	WPL-Edgewater	B23,24 (6.6) 24-hour average/(4.07) 30-day average, B25 (1.2).
Racine	Frank Pure	B20 (2.22).
	JI Case	B21/S11 (0.9%S), B22/S19 (0.9%S).
	SC Johnson	Proposed Disapproval.
	Western Publishing	B20 A,B/S10 (2.18), B21/S11 (2.18).
	Southern Wisconsin Center	Proposed Disapproval.

TABLE 2.—NEGATIVE DECLARATIONS

County	Source	Fuel type restriction
Lake Michigan District:		
Brown	C. Reiss	Permanent shutdown.
	UW—Green Bay	Not allowed to burn coal or residual oil.
Kewaunee	Algoma Hardwoods	Not allowed to burn coal or residual oil.
Marinette	Rodman Industries	Wood, waste/natural gas.
	Ansul Fire Protect	B23 (natural gas/number 2 oil).
Manitowoc	Man Public Util.	Two diesel engines.
Oconto	Scott Papers	Natural gas/number 2 oil.
Outagamie	Roloff	Permanent shutdown.
	Consolidated Papers—Appleton	Not allowed to burn coal or residual oil.
	Stokely—Appleton	Not allowed to burn coal or residual oil.
	Midtec Paper Dryers	Number 2 oil.
Waupaca	Wisconsin Veteran Home	Not allowed to burn coal or residual oil.
Winnebago	American Can—Neenah	Not allowed to burn coal or residual oil.
	Eggers Industrial	Wood waste/natural gas.
	James River—Canal	Not allowed to burn coal or residual oil.
	Wisconsin Tissue Mills	Not allowed to burn coal or residual oil.
	American Can—Menashana	No oil firing capabilities.
West Central District:		
Chippewa	Mid-American	Permanent shutdown.
	Dairyman (coal boiler)	
	National Presto (B20, 21, 24, 25)	Natural gas.
Dunn	UW—Stout	B20, 23 (gas, number 2 oil).
Eau Claire	Armour	Number 2 oil.
	Eau Claire Foundry	Permanent shutdown.
	Hibernia Brewing	Not allowed to burn coal or residual oil.
La Crosse	G. Heilman Malting	Permanent shutdown.
	G. Heilman	B26 Natural gas, number 2 oil.
	Paper Calmenson	Number 2 oil.
	Trane Number 2-5 (B21)	Number 2 oil.
	Webster Wood Preserving	Number 2 oil.
	UW—LaCrosse	B22 Natural gas, number 2 oil.
Pierce	UW—River Falls	B22 Natural gas, number 2 oil.
St. Croix	Friday Canning	B20, Number 2 oil/natural gas.
	St. Croix Health Center	Not allowed to burn coal or residual oil.
Trepeauleau	A.G. Coop Creamery	Number 2 oil.
	Whitehall Foods	Permanent Shutdown.
	AMPI—Blair Whey	Natural gas.
North Central District:		
Marathon	Conner Forest Industries	Permanent shutdown.
	Edelweiss Cheese	Wood Waste/natural gas.
Portage	UW—Stevens Plans	B03/S10, natural gas/number 2 oil, B04/S11, natural gas/number 2 oil.
Wood	Weyerhaeuser	Natural gas.
	Rollohome	Permanent shutdown.
	Marshfield Electric	Permanent shutdown.
Northwest District:		
Ashland	Ashland Timbers (Boilers)	Permanent shutdown.
	Louisiana Pacific Mellen	Number 2 oil.
	James River	Number 2 oil.
Barron	Knetter Cheese	Permanent shutdown.

TABLE 2.—NEGATIVE DECLARATIONS—Continued

County	Source	Fuel type restriction
Douglas	Superior WLP	Number 2 oil.
Polk	Land-O-Lakes	Number 2 oil/natural gas.
Rusk	Pope & Talbot	Number 2 oil.
Southern District:		
Beloit	Beloit Corporation (Foundry)	Permanent shutdown.
Columbia	Stokely—USA	Number 2 oil.
Dane	Wisconsin Porcelain	Permanent shutdown (coal-fired boiler).
	Wolf Paving	Number 2 oil.
	DL Gasser Number 101 (Mathy Construction)	Number 2 oil.
Dodge	Baker Canning	Permanent shutdown.
	Kraft—Beaver Dam	Number 2 oil.
	M&M Grey Iron Foundry	Permanent shutdown.
	Royer Brands	Permanent shutdown.
	Waupun Corr	B24/S10, number 2 oil/natural gas.
	Western Lime & Cement—Knowles	Permanent shutdown.
Fond du Lac	Fond du Lac County Highway	Number 2 oil.
	Wis. State Taycheedah	B21/S11, B22/S12 natural gas/number 2 oil.
	Ram Construction	Permanent Shutdown.
	Western Lime & Cement—Eden	Permanent Shutdown.
	Galloway West	Number 2 oil/natural gas.
Grant	UW—Platteville	B21, natural gas.
Jefferson	UW—Whitewater	B24/S11 number 2 oil/natural gas, B22/S10 number 2 oil/natural gas, B23/S10 natural gas only.
Rock	Baker Manufacturing	Permanent shutdown (coal-fired boiler).
Southeastern District:		
Milwaukee	AC Spark Plug	Number 2 oil.
	Alton Packaging	Natural gas.
	Am Linen & Supply	Natural gas.
	Harley Davidson	Permanent shutdown.
	Inryco	Number 2 oil.
	Ladish	(B24, B25) Not allowed to burn coal, residual oil.
	Milwaukee Forge (Boilers)	Permanent shutdown.
	Master Lock	Not allowed to burn coal, residual oil.
	Peter Cooper	B20, 21, 24 (gas).
	P&V Atlas	Permanent shutdown.
	Steiner	Number 2 oil.
	Teledyne	Natural gas.
	WEPCo—Lakeside	Permanent shutdown.
	Wisconsin Paper Board	B21/S11 (number 2 oil, gas), B22/S10 (number 2 oil, gas).
Racine	Webster Electric	Number 2 oil.
	Western Publishing	B22, shutdown.
Sheboygan	Vollrath	Number 2 oil.
	General Box	Not allowed to burn coal or residual oil.
	Kohler	B29 shutdown.
Walworth	Colt Industries Trent Tube	Proposed Disapproval.
Waukesha	Navistar	Natural gas.
	Muskego Rendering (Boiler)	Permanent shutdown.
	Waukesha Foundry	Permanent shutdown.

[10] Emission limits are in parentheses; unit for emission limitations, unless otherwise noted, are pounds of SO_2 per million British Thermal Units, e.g., (3.0) is equal to an emission limit of 3.0 pounds of SO_2 per million British Thermal Units. Specific boilers are referred to by their State identification number, e.g., boiler number 20 at a given facility is referred to as B20 here.

V. Summary of USEPA's Proposed Rulemaking Action

USEPA is proposing to approve Wisconsin's Statewide SO_2 Rules for those SO_2 sources that were submitted by the State to USEPA with regard to Natural Resources (NR) 417.07 Rule Limitations, (1) for the categorical limits, more restrictive limits, and alternate limits; (2) NR 417.04 Rule for Southeast Wisconsin Limit for small sources; and (3) numerous new source permits.

The Agency has reviewed these portions of the revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that these parts of this action conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Titles I, IV, and V of the 1990 Clean Air Act Amendments will effect changes in the implementation of the SO_2 NAAQS program. In order for all three titles to be carried out as efficiently as possible, USEPA is requiring States nationwide to correct existing enforceability deficiencies in the SIPs. USEPA released the "Yellow Book," in June 1991, which discussed various types of enforcement deficiencies. There are "Yellow Book" deficiencies in the approvable portions of the Wisconsin Statewide SO_2 Rules, however, these deficiencies will be corrected as part of the upcoming national process to rectify these types of enforceability deficiencies. WDNR was notified by USEPA on July 9, 1991, of the enforceability deficiencies in Wisconsin's SIP and was asked to submit a schedule for correcting them and submitting the corrections as a revision of the SIP.

USEPA is proposing to disapprove emission limitations for the following SO_2 sources because the WDNR did not submit a complete plan which provides for attainment and maintenance of the SO_2 NAAQS consistent with all applicable requirements of the Clean Air Act.

American Motors—Kenosha (Main Plant)
Northern States Power—Asland
University of Wisconsin—Milwaukee
Southern Wisconsin Center
Outboard Marine Corporation—Evinrude
S.C. Johnson

Menasha Electric
Plastics Engineering
American Milk Products—Blair Cheese
Richland Center Municipal
Appleton Papers—Appleton
Ore Ida
Consolidated Papers—Wisconsin River Div.
Mosinee Papers
Allis Chalmers
National Presto
Pope & Talbot—Eau Claire
Ansul Fire Protection
Kearney & Trecker
Koch Fuels
Allied Processors
Beatrice Grocery
Falls Dairy
Rexworks
Greenwood Milk
Badger Army Ammunition Plant
Milwaukee County Department H&HS
Colt Industries

The agency has reviewed these portions of the revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that these parts of this action do not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before (30 days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

USEPA is aware that WDNR is in the process of reviewing the submitted SIP revisions. Currently, 10 of the 28 proposed disapprovals contained within this notice are proposed to be disapproved because some of the necessary emission limits and/or operating restrictions are included only in compliance plans instead of the SIP itself. The ten sources in this category of proposed disapprovals are: UW-Milwaukee, Southern Wisconsin Center, Outboard Marine Corporation-Evinrude, S.C. Johnson, Menasha Electric, Richland Center Municipal, Appleton Papers-Appleton, Orelda, Allis Chalmers Power Plant, and Mosinee Papers. It is USEPA's understanding that WDNR plans to officially submit the compliance plans, which contain the appropriate emission limits and/or operating restrictions, as formal SIP revisions for these sources whose plans have been determined to be deficient in this respect before the end of the 30-day comment period. These new submittals should result in technically approvable limits, restrictions, and/or methodologies being inserted into the SIP, thus USEPA is prepared to approve the SIP revisions in the final rulemaking.

There are thirteen other site-specific plans that are proposed disapprovals because of problems with recordkeeping and recording requirements. The sources in this category are: National Presto, Pope and Talbot-Eau Claire, Ansul Fire Protection, Kearney and Trecker, Koch Fuels, Allied Processors, Beatrice Grocery, Falls Dairy, Rexworks, Greenwood Milk, Badger Army Ammunition Plant, Milwaukee County Department of H&HS, and Colt Industries. USEPA has discussed the reasons for these proposed disapprovals with the WDNR and understands that the State plans on attempting to address these deficiencies during the public comment period. If the WDNR rectifies these compliance deficiencies by submitting the individual compliance plans with the appropriate recordkeeping requirements as SIP revisions, USEPA is prepared to approve these site-specific SIP revisions in the final rulemaking.

For three of the proposed disapproved site-specific plans: Plastics Engineering, AMPI-Blair, and Consolidated Papers-Wisconsin River Division, it is USEPA's understanding that the State plans on submitting the appropriate material for USEPA to approve the plans during the public comment period. The appropriate materials in this case are Administrative Orders that have undergone a public hearing. If USEPA receives Administrative Orders for these sources with emission limits that have been technically justified by an acceptable modeling demonstration and documentation that a public hearing was held, the Agency is prepared to approve these site-specific SIP revisions in the final rulemaking.

For two other of the proposed proposed disapproved site-specific plans: American Motors-Main and Northern States Power-Ashland, it is USEPA's understanding that the State plans on submitting acceptable modeling analyses and compliance methodologies capable of accounting for the wide variability in emission limitations as part of the SIP revisions for these sources. If USEPA receives the aforementioned material before the end of the public comment period, the Agency is prepared to approve these site-specific SIP revisions in the final rulemaking.

Any revisions made by the State during the public comment period will be added into the written record and will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before February 3, 1992 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). As to the disapprovals, they too will not have a significant economic impact on a substantial number of small entities, because they affect only a small number of sources in Wisconsin.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: March 21, 1990.

Valdas V. Adamkus,

Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register on December 27, 1991.

[FR Doc. 91-31303 Filed 12-31-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Threatened Status for the Mexican Spotted Owl (Strix occidentalis lucida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that public hearings will be held on the proposed rule to list the Mexican spotted owl (*Strix occidentalis lucida*) as a threatened species. The hearing will

allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearings will be held from 6 p.m. to 9 p.m. on the following dates: January 21, 1992, in Santa Fe, New Mexico; January 22, 1992, Alamogordo, New Mexico; January 23, 1992, Silver City, New Mexico; February 4, 1992, Tucson, Arizona; February 5, 1992, Flagstaff, Arizona; and February 6, 1992, Cedar City, Utah.

The comment period was opened on November 4, 1991, and will close on March 3, 1992. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearings will be held at the following places: January 21, 1992, Public Employee's Retirement Association (PERA) Building, Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico; January 22, 1992, Alamogordo Civic Center Auditorium, 800 First St., Alamogordo, New Mexico; January 23, 1992. Light Hall Auditorium, Western New Mexico University, Silver City, New Mexico; February 4, 1992, Pima Community College, Center For The Arts, Proscenium Theater, Pima College, West Campus, 2202 W. Anklam Rd., Tucson, Arizona; February 5, 1992, Flagstaff High School Auditorium, 400 West Elm Ave., Flagstaff, Arizona; and February 6, 1992, Conference Room, Bureau of Land Management District Office, 176 East D.L. Sargent Dr., Cedar City, Utah.

Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Buck Cully, at the above address (505/883-7977 or FTS 474-7877).

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is most abundant in forests in New Mexico and Arizona, but is also found in Colorado, Texas, Utah, and Mexico. This owl most often inhabits forested mountains and canyons containing dense, uneven-aged, multistoried forests with a closed canopy. The estimated total population of Mexican spotted owls in 1990 was 2,160. Threats to this species include loss of habitat from logging and fires, increased predation associated with habitat fragmentation and lack of protective regulation. A proposed rule to list this species as threatened was published in the **Federal Register** (56 FR 56344) on November 4, 1991.

Section 4(b)(5)(E) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Because of anticipated widespread public interest, the Service has decided to hold six public hearings.

The Service has scheduled these public hearings as follows: January 21, 1992, Public Employee's Retirement Association (PERA) Building, Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico; January 22, 1992, Alamogordo Civic Center Auditorium, 800 First St., Alamogordo, New Mexico; January 23, 1992, Light Hall Auditorium, Western New Mexico University, Silver City, New Mexico; February 4, 1992, Pima Community College, Center For The Arts, Proscenium Theater, Pima College, West Campus, 2202 W. Anklam Rd., Tucson, Arizona; February 5, 1992, Flagstaff High School Auditorium, 400 West Elm Ave., Flagstaff, Arizona; and February 6, 1992, Conference Room, Bureau of Land Management District Office, 176 East D.L. Sargent Dr., Cedar City, Utah. Oral statements may be limited to several minutes if there are many requests to speak. Oral comments presented at the public hearings are given the same weight and consideration as written comments. If the public hearings are of insufficient time to provide for all who wish to speak, all who are not accommodated will be asked to submit their comments in writing. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The Service must receive all comments by March 3, 1992. Comments should be submitted to the Service at the office listed in the **ADDRESSES** section above.

Author

The primary author of this notice is Lorena L.L. Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505/766-2914 or FTS 474-2914).

Authority

The authority citation for this action is 16 U.S.C. 1531-1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Reporting and record keeping requirements, and Transportation.

Dated: December 26, 1991.

Joseph P. Mazzoni,

Acting Director.

[FR Doc. 91-31279 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-55-M

Kay, Kingfisher, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, and Washington Counties.

The geographic area presently assigned to Erie, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Ohio: Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State south to State Route 154;

Bounded on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Exceptions to Erie s assigned geographic area are the following export port locations inside Erie s area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested persons, including Enid and Erie, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning July 1, 1992, and ending June 30, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub .L. 94-582, 90 Stat. 2867, as amended (7 U S.C 71 *et seq*)

Dated: December 24, 1991

J. T. Abshier,

Director, Compliance Division

[FR Doc. 91-31262 Filed 12-31-91, 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicant for Designation in the Geographic Area Formerly Assigned to the Chattanooga (TN) Agency

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area formerly assigned to Chattanooga Grain Inspection Company, Inc. (Chattanooga).

DATES: Comments must be postmarked on or before February 18, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 25, 1991, **Federal Register** (56 FR 55269), FGIS cancelled Chattanooga's designation and requested comments on the need for official inspection and weighing in the geographic area formerly assigned to Chattanooga. FGIS also requested persons interested in providing official services in this geographic area to submit an application for designation. The deadline for applications and comments was November 25, 1991. J. W. Barton Grain Inspection Service, Inc (Barton), the only applicant, applied for the entire available area. FGIS received comments from two grain firms requesting that official services be provided in the Chattanooga area. FGIS has authorized Barton to provide official services in the Chattanooga area on a temporary basis until an inspection agency can be designated. Persons wishing to obtain official inspection or weighing in this geographic area should contact Barton at 502-683-0616.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

Authority: Pub .L. 94-582, 90 Stat 2867, as amended (7 U.S.C 71 *et seq*)

Dated: December 24, 1991

J. T. Abshier,

Director, Compliance Division

[FR Doc. 91-31260 Filed 12-31-91, 8.45 am]

BILLING CODE 3410-EN-F

Forest Service

Waterman and Cummings Creek Timber Sales, Umatilla National Forest, Garfield and Columbia Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber, and implement associated projects, on the Waterman and Cummings Creek timber sales which are situated in the Willow Springs Roadless Area No. 14015 (Umatilla Forest Plan FEIS C-24). The proposed projects will be in compliance with the Umatilla Forest Land and Resource Management Plan's Standards and Guidelines, which provide the overall guidance for management of this area and the proposed projects. The proposed projects are located in Columbia and Garfield counties, Washington, and lie against the northern boundary of the Umatilla National Forest. This area may be accessed on the northwest and southwest sides from Forest Road 47, on the southeast side from Trail No. 3139

Notices

Federal Register
Vol. 57, No. 1
Thursday, January 2, 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

Federal Grain Inspection Service

Designation of Grand Forks (ND), Lima (OH), and the State of Virginia (VA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Grand Forks Grain Inspection Department, Inc. (Grand Forks), Lima Grain Inspection Service, Inc. (Lima), and the Virginia Department of Agriculture and Consumer Services (Virginia), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1991, **Federal Register** (56 FR 36760 and 36761), FGIS announced that the designations of Grand Forks, Lima, and Virginia terminate on January 31, 1992, and asked persons interested in providing official services within the geographic areas currently assigned to these agencies to submit an application for designation. Applications were to be postmarked by September 3, 1991.

Grand Forks, Lima, and Virginia, the only applicants, each applied for the entire geographic area currently assigned to them. FGIS named and requested comments on the applicants for the Lima and Virginia area designations in the October 1, 1991, **Federal Register** (56 FR 49740-49741). Comments were to be postmarked by November 15, 1991. FGIS received no comments by the deadline.

FGIS named and requested comments on the applicant for the Grand Forks area designation in the October 25, 1991, **Federal Register** (56 FR 55269). Comments were to be postmarked by December 9, 1991. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Grand Forks, Lima, and Virginia are able to provide official services in the geographic areas for which they applied.

Effective February 1, 1992, and terminating January 31, 1995, Grand Forks and Lima are designated to provide official grain inspection services in the geographic areas specified in the August 1, 1991, **Federal Register**, and Virginia is designated to provide official grain inspection and Class X or Class Y weighing in the geographic areas specified in the August 1, 1991, **Federal Register**.

Interested persons may obtain official grain inspection by contacting Grand Forks at 701-772-0151, Lima at 419-223-7866, and Virginia at 804-786-3939.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

Dated: December 24, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-31261 Filed 12-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Enid (OK), and Erie (OH) Agencies

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed. The designations of Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie) will terminate, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: . Applications must be postmarked on or before February 3, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the FGIS to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Enid located at 2205 N. 10th Street, Enid, OK, and Erie located at 301 North Street, Bellevue, OH, to officially inspect grain under the Act on July 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Enid and Erie end on June 30, 1992.

The geographic area presently assigned to Enid, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows: Adair, Atoka, Blaine, Bryan, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garfield, Garvin, Grady, Grant, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston,

and Forest Road 4022, and on the east side from Forest Roads 40 and 4018. There are no maintained trails within the roadless area. The proposed project would be implemented in Fiscal Year 1993 on the Pomeroy Ranger District. The Umatilla National Forest invites written comments and suggestions to help define the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal to provide interested and affected people information on how they may participate and contribute to the final decision.

DATES: Comments concerning the issues and the scope of the analysis should be received in writing by February 28, 1992.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Dave Price, District Ranger, Pomeroy Ranger District, Route 1, Box 53-F, Pomeroy, Washington 99347.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed projects and EIS should be directed to Bob Housley, District Planner/ Environmental Coordinator, phone (509) 843-1891.

SUPPLEMENTARY INFORMATION: This proposal includes harvesting timber and construction of roads. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest 8.9 MMBF of timber from approximately 1275 acres while constructing approximately 0.4 miles of roads within the Willow Springs Roadless Area and construction of approximately 0.6 miles outside the Willow Springs Roadless Area. The area being analyzed is approximately 11,100 acres.

This EIS will tier to the final EIS and the Umatilla Forest Plan (June 11, 1990). The Forest Plan's direction for this area includes Management Areas: A3 Viewshed 1)—Manage the areas seen from portions of Forest Service Roads 4712 and 4713 as a natural appearing landscape; C1 Dedicated Old Growth—Provide and protect sufficient suitable habitat for Wildlife species dependent upon mature and/or overmature forest stands; C3 Big Game Winter Range—Manage big game winter range to provide high levels of potential habitat effectiveness and high quality forage; C5 Riparian (fish and wildlife)—Maintain or enhance water quality, and produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas while providing for a high level of habitat effectiveness for big game; C8 Grass-Tree Mosaic (GTM)—On areas known as grass-tree mosaic (GTM), provide high levels of potential habitat effectiveness, high quality forage for big game wildlife species, visual diversity, and protect erosive soils; E2 Timber and Big Game—Manage forest lands to emphasize production of wood timber (timber), encourage forage production, and maintain a moderate level of big game and other wildlife habitat.

Preliminary issues identified include roadless area, economics, biological diversity, elk habitat, access, big game winter range, timber production, old growth habitat protection, effects upon potential endangered and threatened species (such as anadromous fish), and effects on future options for including the Tucannon River as a wild, scenic or recreation river. There are no permits or licenses needed to implement this action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comments. Keeping the public informed through the media/or written material (i.e. newsletters, correspondence, etc).

Initial public scoping will begin in March 1992 with a public meeting. Additional meetings will be held at the Pomeroy Ranger District upon written notice. The public's comments will be solicited and are appreciated throughout the analysis process. The draft EIS is scheduled to be completed by February 1993.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by August 1993. In the final environmental impact statement, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft environmental impact statement and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Jeff D. Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the

decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 16, 1991.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 91-31270 Filed 12-31-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, January 23, 1992, at the Metro-Dade Government Center, 111 NW 1st Street, Miami, Florida 33128. The purpose of the meeting is to discuss the status of the Commission and follow-up plans to the Tampa policy project. In addition, the committee will receive information from community leaders on racial tensions in Florida (Miami).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361-4991 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, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-31277 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 8:30 p.m. on January 23, 1992 and reconvene at 9 a.m. and adjourn at 12 noon on January 24, 1992, at the Holiday Inn, 1612 North Providence Road & I-70, Columbia, Missouri. The purpose of the meeting is to conduct an orientation session for the Advisory Committee and plan for future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). 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, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-31276 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will be held from 1 p.m. until 3:30 p.m. on Tuesday, January 28, 1992, at the Howard Johnson Hotel, 3300 West Russell, Sioux Falls, South Dakota 57102. The purpose of the meeting is to review a draft of a women's rights handbook and plan future projects.

Persons desiring additional information should contact Committee Chairperson, Marcella Prue, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (301) 844-6716 (TDD 303-844-6720). 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, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 91-31278 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 82-91]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone; Fairmont/Gulfstream Modular Housing and Recreational Vehicle Plants, Elkhart County, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for the modular housing and recreational vehicle (RV) plants of Fairmont Homes, Inc. (Fairmont) and its subsidiary, Gulf Stream, Inc. (Gulfstream) located in Elkhart County, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

The proposed subzone involves a main manufacturing complex and two related facilities located in Nappanee, Elkhart County, some 20 miles southeast of South Bend, Indiana: Site 1 (234 acres)—Fairmont/Gulfsteam modular housing and recreational vehicle main manufacturing and warehouse complex, Oakland Avenue, Nappanee; Site 2 (8 acres)—components manufacturing facility, U.S. Highway 6 West, Nappanee; Site 3 (6 acres)—Gulfstream recreational vehicle manufacturing facility, 1701 Century Drive, Goshen, some 15 miles northeast of Nappanee.

The facilities employ 1,800 persons and are used to manufacture modular housing, mobile homes, travel trailers, van conversions (domestic chassis), and RV's, including Class A and Class B motor homes and Class C micro-mini RV's. Some of the components (currently about 25%) used in the modular housing products are sourced abroad including tires, wood products, ceramic fixtures, iron and steel shapes, screws, bolts, nuts, household laundry machines, dishwashing machines, household kitchen appliances, consumer electronic equipment, electrical switching apparatus, wire, cable, seats, mattresses, lamps and other household furnishings. Some of the components (currently about 20%) incorporated into RV's are sourced abroad including those mentioned above and additionally, rubber and plastic hoses, engines parts, pumps, pulley tackles and hoists, transmissions shafts and cranks, cab chassis, chassis, speedometers, and instrument panel clocks. The Class C

micro-mini RVs are built on a foreign-sourced light pick-up truck cab/chassis (<6,000-lb. GVW). The other vehicles are built on domestic chassis.

Zone procedures would exempt Fairmont from Customs duty payments on materials used in production for export. On domestic sales the company would be able to choose the duty rates that apply to finished products (2.5—3.2 percent). The duty rates on the foreign materials range from zero to 17 percent. On its domestic sales of micro-mini RVs, the company would be able to choose the lower finished vehicle duty rate (2.5 percent) rather than the pick-up truck cab/chassis rate (25 percent). The applicant indicates that zone savings would help Fairmont/Gulfstream improve its international competitiveness and increase export sales. The Board has approved (with restriction) two other micro-mini RV production operations: The Forest City, Iowa facility of Winnebago Industries, Inc. (FTZ Subzone 107A, 49 FR 35971, 9/13/84) and the Perris, California facility of National RV (FTZ Subzone 50C, 55 FR 35159, 8/28/90).

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, suite 217, 610 South Canal Street, Chicago, Illinois 60607; and Colonel Richard Kanda, District Engineer, U.S. Army Engineer District Detroit, Mc Namara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226.

Comments concerning the application are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 14, 1992.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Mid-Continental Plaza Bldg., rm. 1406, 55 E. Monroe St., Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: December 23, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-31310 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 81-91]

Foreign-Trade Zone 17—Kansas City, KN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 17, Kansas City, Kansas, requesting authority to expand its zone to include a site in Leavenworth, Kansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

FTZ 17 was approved on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74), and expanded on January 31, 1989 (Board Order 428, 54 FR 5992, 2/7/89). It currently consists of three sites in the Kansas City area: Site 1 (405,000 sq. ft.) located at 6500 Inland Drive, operated by Americold Corporation; Site 2 (220,000 sq. ft.) located at 5203 Speaker Road, operated by Customized Transportation, Inc., and Site 3 (6 acres, 76,000 sq. ft.) located at 30 Funston Road, operated by International Transit and Storage Corporation.

The grantee is now requesting authority to expand the zone to include a site (23 acres) on the Missouri River at the former Missouri Valley Shipyard, 1800 South Second Street, Leavenworth, Kansas. The site is owned and operated by Chem-Tronics, Inc.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and, Colonel Wilbur H. Boutin, Jr., District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 18, 1992.

A copy of the application is available for inspection at each of the following locations:

U.S. Department of Commerce, District Office, 601 East 12th Street, room 635, Kansas City, Missouri 64106.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: December 23, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-31311 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 546]

Resolution and Order Approving the Application of the Akron-Canton Regional Airport Authority for a Foreign-Trade Zone in the Akron-Canton, OH, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Arkron-Canton Regional Airport Authority, filed with the Foreign-Trade Zones Board (the Board) on June 1, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Akron-Canton, Ohio, area within the Cleveland/Akron Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and

Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under jurisdiction of the United States;

Whereas, The Akron-Canton Regional Airport Authority (the Grantee) has made application (filed June 1, 1990, FTZ Docket 22–90, 55 FR 23956, 6/13/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at a site in the Akron-Canton, Ohio, area, within the Cleveland/Akron Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 181, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations: Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 23 day of December, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31314 Filed 12–31–91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 551]

Approval for Expansion of Foreign-Trade Zone 84; Harris County, Texas

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, The Port of Houston Authority, Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to expand its general-purpose zone in Harris County, Texas, within the Houston Customs port of entry;

Whereas, The application was accepted for filing on October 4, 1991, and notice inviting public comment was given in the **Federal Register** on October 11, 1991 (Docket 58–91, 56 FR 51373);

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to improve and expand zone services in the Harris County area; and,

Whereas, The Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, The Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on October 4, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 24th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31313 Filed 12–31–91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 550]

Resolution and Order Approving the Application of Foreign Trade Zone of Central Texas, Inc. for a Foreign-Trade Zone in the Austin, TX, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Central Texas, Inc., filed with the Foreign-Trade Zones Board (the Board) on April 26, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone consisting of seven sites in the Austin, Texas, Customs port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for

other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Foreign Trade Zone of Central Texas, Inc. (the Grantee), a Texas not-for-profit corporation, has made application (filed 4–26–91, FTZ Docket 23–91, 56 FR 21127, 5–7–91) to the Board, requesting the establishment of a foreign-trade zone at certain sites in the Austin, Texas, Customs port of entry area;

Whereas, Notice of said application has been published in the Federal Register and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated as Foreign-Trade Zone 183, at the sites described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 23rd day of December 1991.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31312 Filed 12–31–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-820]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Antidumping Duty Determination: New Minivans From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: James Maeder, 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) 377–4929.

PRELIMINARY DETERMINATION:

Background

Since the notice of initiation on June 26, 1991 (56 FR 29221), the following events have occurred.

On July 10, 1991, the petitioners (Ford Motor Company, General Motors Corporation, and Chrysler Corporation) requested that the criteria by which to determine whether a vehicle is a minivan (and, thus, within the scope of this investigation) be amended from that proposed in their petition and set forth in our notice of initiation. The petitioners stated that this request was made in order to ensure that the investigation cover the range of merchandise that they consider to be minivans, including the Mitsubishi Expo and Expo LRV. See, "Scope of Investigation" section of this notice.

On July 15, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of new minivans from Japan.

On July 19, 1991, we decided that the period of investigation (POI) for both respondents in this investigation, Mazda Motor Corporation and Mazda Motor of America, Inc. (collectively Mazda) and Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (collectively Toyota), should begin and end two months earlier than the normal POI, (*i.e.*, October 1, 1990, through March 31, 1991). Subsequently, pursuant to requests by both respondents, we accepted additional comments on the issue. On August 12, 1991, we amended our earlier decision and decided to use an extended POI for Mazda (October 1, 1990, through May 31, 1991) and the standard six-month POI for Toyota (December 1, 1990, through May 31, 1991). See, the "Period of Investigation" section of this notice.

On July 22, 1991, we presented questionnaires to Mazda and Toyota, which together accounted for more than 60 percent of exports by volume to the United States during the period relevant to the investigation, in accordance with 19 CFR 353.42(b). On August 5, 1991, we received responses to section A of the questionnaire from Mazda and Toyota which contained general background information. On August 7, 1991, we presented section D of the questionnaire relating to constructed value (CV) to Mazda and Toyota.

On August 8, 1991, Mitsubishi Motors Corporation and Mitsubishi Motor Sales of America, Inc. (collectively "Mitsubishi") requested that the Department clarify that the Mitsubishi Expo vehicles, which began entering the United States in Fall 1991, are not minivans. See, the "Scope of Investigation" section of this notice for further discussion.

On August 21, 1991, we presented section E of the questionnaire relating to further manufacturing in the United States to Mazda.

On August 26, 1991, we issued section A deficiency letters to Mazda and Toyota. On September 4, 1991, we received Mazda's response to sections B, C, D, and E and Toyota's response to sections B, C and D of the questionnaire. In addition to the requested data, Mazda submitted Canadian sales data and sales data based on the standard six-month POI. We did not analyze the Canadian sales data or six-month POI sales data submitted by Mazda because we have determined that the home market was viable and that an eight-month POI is more appropriate for Mazda. Mazda has submitted further arguments for using these data. On September 10, 1991, Mazda and Toyota submitted their responses to the Department's section A deficiency letters. On September 20, 1991, we issued a second deficiency letter to each respondent. We received Toyota's response to this letter on October 4, 1991, and Mazda's response on October 7, 1991.

On October 22, 1991, pursuant to petitioners' request, we published a notice of postponement of the preliminary determination until not later than December 27, 1991 (56 FR 54561), in accordance with 19 CFR 353.15(c).

Mazda, on October 24, 1991, requested that the final determination be postponed a minimum of three weeks if the preliminary determination was affirmative so that verification could be moved to a later date to avoid scheduling conflicts. Toyota, on October 25, 1991, made a similar request. See, the "Postponement of Final Determination" section of this notice for further discussion.

On October 30, 1991, we issued an additional deficiency letter to each respondent. On November 13, 1991, we received Mazda's and Toyota's responses to these deficiency letters.

On November 4, 1991, and November 12, 1991, petitioners submitted timely allegations that Toyota and Mazda, respectively, had made sales in the home market below the cost of production (COP). On November 15, 1991, we initiated a COP investigation of Toyota's home market sales and issued a COP questionnaire to Toyota. On November 25, 1991, we received Toyota's response to this COP questionnaire. On November 27, we

initiated a COP investigation of Mazda and issued a COP questionnaire to Mazda. On December 10, 1991, we received Mazda's response to this COP questionnaire. Toyota's COP data, received earlier than Mazda's, were received in time for analysis and use in this preliminary determination. Although we were unable to do so in time for the preliminary determination, we will analyze Mazda's COP information for the final determination.

On October 24, November 5, November 7, and December 4, 1991, petitioners alleged that Toyota's reported adjustments for differences in merchandise (difmers) were distorted because the transfer prices between Toyota and its related suppliers were distorted. On October 29, November 6, November 8, and November 12, 1991, Toyota countered petitioners' assertions, arguing that there was no distortion in the transfer prices and that the difmers reflected the costs of actual physical differences. On December 31, 1991, after considering the arguments of petitioners and Toyota, and based on our own analysis of Toyota's data, we determined that it was appropriate to collect additional information regarding Toyota's related suppliers. Accordingly, on December 13, 1991, we issued a supplemental questionnaire to Toyota. See, Memorandum from Deputy Assistant Secretary Sailer, to Assistant Secretary, Alan M. Dunn, dated December 13, 1991, for a detailed discussion of this issue. Finally, petitioners requested that we disallow Toyota's reported difmers for purposes of the preliminary determination. At this time we determine that there is insufficient justification on the record to reject Toyota's difmers for the preliminary determination. We will continue to examine Toyota's difmer claims, and, if appropriate, make adjustments for the final determination.

We received numerous comments from all parties immediately prior to the preliminary determination submitted too late to be considered for the preliminary determination. We will, however, consider these comments for purposes of the final determination.

Scope of Investigation

The products covered by this investigation are new minivans from Japan. In the notice of initiation we stated that we would continue to consider the definition of a minivan and would refine it, if necessary. We received comments from all the parties, as noted in the "Background" section of this notice. Based in part on these comments, we refined the definition of a minivan. *See,* Memorandum from Deputy Assistant Secretary Sailer, to Assistant Secretary Dunn, dated December 13, 1991, for a detailed discussion of this issue.

For purposes of this investigation, a new minivan is defined as an on-highway motor vehicle which generally has the following characteristics:

(1) A cargo capacity behind the front row of seats that is 100 cubic feet or greater and less than 200 cubic feet;

(2) A body structure, width and seat configuration capable of providing full walk-through mobility from the front seat row to the third seat row, or at least partial walk-through mobility from either (a) the front seat row to the second seat row or (b) the second seat row to the third seat row;

(3) A hood that is sloping and a short distance from the cowl to the front bumper relative to the overall length of the vehicle;

(4) A gross vehicle weight that is less than 6,000 pounds;

(5) A height that is between 62 and 75 inches;

(6) A single, box-like structure that envelopes both the space for the driver and front-seat passenger and the rear space (which has flat or nearly flat floors and is usable for carrying passengers and cargo); and,

(7) A rear side passenger access door (or doors) and a rear door (or doors) that provide wide and level access to the rear area.

A vehicle does not necessarily have to meet all seven criteria to be considered a minivan. We will compare the physical characteristics of vehicles with the above criteria and determine on a case-by-case basis whether a vehicle shares enough physical characteristics with minivans, as described by the above seven criteria, to be considered a minivan. While we consider all seven of the above criteria important in determining whether a vehicle is a minivan, we consider the criteria which reflect a measurement of interior space (cargo capacity, walk-through capability, and cowl length) to be of primary importance.

We have examined petitioners' contentions that the Mitsubishi Expo and Expo LRV are within the scope of this investigation and Mitsubishi's request that these vehicles be excluded from the scope. Our preliminary determination is that the Expo and Expo LRV, when analyzed by reference to the seven scope criteria, cannot be considered minivans. Accordingly, although specifically named in the petition, the Expo and Expo LRV are not within the class or kind of merchandise subject to this investigation. Since there is no allegation of less than fair value sales for any vehicle other than minivans, no investigation of any other vehicle is warranted. See, Memorandum from Director, Office of Antidumping Investigations, Richard W. Moreland, to Deputy Assistant Secretary Sailer, dated December 19, 1991, for a detailed discussion of this issue.

Minivans are currently classifiable under either subheading 8703 or subheading 8704 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The petition in this investigation was filed on May 31, 1991. Pursuant to 19 CFR 353.42(b)(1), the standard POI for this investigation is December 1, 1990, through May 31, 1991. However, in the petition and in subsequent submissions dated July 15 and July 16, 1991, petitioners requested that we begin and end the POI two months earlier (*i.e.,* October 1, 1990, through March 31, 1991). Petitioners gave three reasons for this request: (1) To capture all post-sale price adjustments which occur on sales of minivans; (2) to account for the possibility of seasonal price variations; and (3) to account for potential price manipulation by respondents which may have been triggered by media speculation in Japan of a possible antidumping petition prior to its filing.

Mazda and Toyota objected to petitioners' request, stating that all post-sale price adjustments corresponding to sales during the standard POI would be reported during the course of the investigation. Toyota further argued that petitioners had not provided factual support for the reasons for their request.

As noted in the "Background" section of this notice, on July 19, 1991, we decided that the POI for both Mazda and Toyota should be October 1, 1990, through March 31, 1991. Pursuant to requests by the parties, however, we reopened the issue and solicited additional comments from all parties. We also collected information regarding pricing data which respondents had submitted to the ITC.

Based on our analysis of these additional comments and the pricing data, we reconsidered our July 19, 1991, decision. On August 12, 1991, we determined that there was a clear indication that Mazda's pricing was seasonal and that expanding the POI by two months to encompass October 1, 1990, through May 31, 1991, would most appropriately capture Mazda's pricing

practices. We also determined that there was no factual basis on the record for modifying the standard POI (December 1, 1990, through May 31, 1991) with respect to Toyota.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that minivans comprise a single category of "such or similar" merchandise. We considered comments from all parties as to the appropriate basis for establishing product similarity. We determined that petitioners' suggestion that we base similarity on the five characteristics of: (1) Platform type; (2) body style; (3) engine size; (4) type of drive; and (5) transmission type, was the most appropriate method. See, appendix V of the July 22, 1991, questionnaire.

Fair Value Comparisons

To determine whether sales of new minivans from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We compared U.S. sales of new minivans to sales of similar minivans sold in Japan. For Mazda, we determined that fleet sales and non-fleet sales were made at different levels of trade. Therefore, where possible, we made comparisons at the same level of trade.

Where we found no similar merchandise in the home market with an adjustment for physical difference of less than 20 percent of the total cost of manufacturing (COM) of the U.S. vehicle, we used CV as the basis for FMV. Petitioners (on August 30, 1991) and Toyota (on September 4 and 26, 1991) suggested that the Department should consider comparisons where the difference was greater than 20 percent. However, we determined that neither party had provided adequate justification for this approach.

United States Price

Mazda

Mazda made sales in the United States to unrelated dealers and to an unrelated distributor. For sales to dealers, we based USP on exporter's sales price (ESP) in accordance with section 772(c) of the Tariff Act of 1930, as amended (the Act), because (1) these sales were made after importation into the United States, (2) the subject merchandise was introduced into the inventory of Mazda's related U.S. selling agent, and (3) Mazda's related U.S. sales agent acted as more than a processor of sales-related documentation and communication link with unrelated U.S. customers.

For sales to Mazda's distributor, we also based USP or ESP, although the sales were made prior to importation, because the minivans sold to the distributor were handled by Mazda's related U.S. sales agent who acted as more than a processor of sales-related documentation and a communication link with the unrelated U.S. customer. We excluded from our analysis sales made to unrelated dealers in Puerto Rico as well as sales made to related dealers in the United States because these sales accounted for a negligible quantity of Mazda's sales.

We calculated ESP based on delivered prices to unrelated customers in the United States. We made additions to USP, where appropriate, for interest revenue received by Mazda on the sale of minivans, revenue received for port-processing and transportation, and credit for a reduction in U.S. duties paid on U.S. components incorporated into the imported vehicle. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. brokerage and handling, and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. We made deductions, where appropriate, for post-sale incentives. We recalculated the amount reported for one of Mazda's incentive programs, the "Holiday Magic Salesman" program, to reflect the average per-unit amount paid on all eligible vehicle lines because Mazda made no distinction between vehicle lines under the program.

In accordance with section 772(e)(2) of the Act, we made additional adjustments, where appropriate, for credit expenses, flooring expenses, the gain or loss associated with the resale of vehicles sold to major rental car companies (repurchase expenses), advertising expenses, warranty expenses, dealer holdback charges, Mazda Dealer Association payments, payments for pre-delivery inspections, port changes, other expenses which include the purchase and placement of portfolios and floor mats into the imported vehicle and the payment of a wholesale tax on vehicles sold to Hawaiian dealers, product liability premium expenses, indirect selling expenses, and inventory carrying costs.

Mazda reported credit expenses for sales to the majority of its dealers based on an average U.S. price. We recalculated credit expenses for these sales based on the prices reported in Mazda's U.S. sales listing.

Mazda reported its repurchase expenses as direct advertising expenses and allocated them over all sales. We reclassified these expenses as sales-specific expenses. We then calculated repurchase expenses as the price received when the vehicle was resold less than the repurchase price paid to the rental company and all expenses associated with the resale and reduced advertising expenses accordingly. See, Memorandum to Assistant Secretary Dunn, from Deputy Assistant Secretary Sailer, dated December 13, 1991.

Mazda reported per unit warranty costs as POI warranty expenses divided by the number of sales since the introduction of the MPV (its minivan model) in the home market. However, we recalculated Mazda's warranty expenses, to reflect only POI experience, by dividing the value of POI claims by the volume of POI retail sales.

We used best information available (BIA) to calculate pre-delivery inspection expenses because a significant number of the expenses reported in Mazda's sales listing did not correspond to the information provided in Mazda's narrative response. As BIA, we used the highest pre-delivery inspection amount reported in Mazda's narrative response for any dealer.

In accordance with section 772(e)(1) of the Act, we deducted from USP arm's-length commissions paid to related parties.

We also deducted all value added to the minivan after importation, pursuant to section 772(e)(3) of the Act. The U.S. value added consists of the costs associated with the production and sale of the minivan and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the minivan all production and selling costs incurred by the company for the minivan. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the minivan, we included (1) the costs of manufacture for each component, (2) movement expenses for each component, and (3) general expenses, including selling, general, and administrative expenses, research and development (R&D) expenses, and interest expenses.

For comparisons in which FMV was based on home market prices we added to net unit price the amount of value-added tax (VAT) that is not collected by reason of exportation of the

merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act.

Toyota

Toyota had sales in the United States to unrelated dealers and unrelated distributors, associates, and vendors. For all sales, we based USP on ESP in accordance with section 772(c) of the Act because Toyota's related U.S. sales agent acted as more than a processor of sales-related documentation and communication link with unrelated U.S. customers. We excluded from our analysis sales made to unrelated distributors in Hawaii and Puerto Rico, as well as sales made to a related dealer, because these sales accounted for a negligible portion of Toyota's sales quantities.

We calculated ESP based on delivered prices to unrelated customers in the United States. We made additions to USP for freight charges paid to Toyota by distributors and dealers and retail sale processing charges. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling, foreign loading, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. brokerage, U.S. wharfage and handling, harbor maintenance and merchandise processing fees, port of entry services, pre-delivery services, survey costs, and additional miscellaneous movement charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts, rebates, and post-sale billing adjustments.

In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit expenses, advertising expenses, warranty expenses, royalties, courtesy delivery reimbursements, bank charges, other direct selling expenses, indirect selling expenses, and inventory carrying costs.

We recalculated inventory carrying costs and imputed credit expenses by using as the time in inventory the period between the date of production and the date of sale, and as the time during which Toyota extended credit to its customer the period between the date of sale and the date of payment. Where Toyota deducted profits for expenses incurred on services performed by related parties, we added the profits back into the expenses.

We also deducted all value added to the minivan, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the minivan and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the minivan all production and selling costs incurred by the company for the minivan. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the minivan, we included (1) the costs of manufacture for each component, (2) movement expenses for each component, and (3) general expenses, including selling, general, and administrative expenses, R&D expenses, and interest expenses.

For comparisons in which FMV was based on home market prices we added to net unit price the amount of VAT that is not collected by reason of exportation of the merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of new minivans in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of new minivans to the volume of third country sales of new minivans, in accordance with section 773(a)(1) of the Act. Both Mazda and Toyota had viable home markets with respect to sales of new minivans during the POI.

Mazda

As noted in the "Background" section, in response to our COP investigation, we received Mazda's COP data on December 10, 1991. We were unable, however, to analyze the information for purposes of the preliminary determination. We will examine cost information at verification and incorporate the results into the final determination.

We excluded from our analysis sales made to employees in the home market because these sales were outside the ordinary course of trade and accounted for a negligible quantity of Mazda's sales. For purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

Where FMV was based on home market prices, we calculated FMV based on delivered prices to related and unrelated dealers in the home market. We made deductions, where appropriate, for dealer incentives and inland freight. Mazda reported an average POI inland freight expense based upon monthly average expenses. Rather than use the average POI figure, we used the monthly average freight expenses in our calculations because we determined they more accurately represented Mazda's freight expenses. We also made deductions, where appropriate, for credit expenses, warranty expenses, advertising expenses, and pre-delivery inspection expenses.

Mazda reported credit expenses based on gross home market prices including VAT. We recalculated credit expenses to exclude the VAT amounts.

Regarding warranty expenses, Mazda claimed a "start-up" adjustment to account for the fact that its home market minivan had been introduced more recently in Japan than in the United States. We disallowed Mazda's start-up claim because it was based on U.S. warranty experience, without adjusting for differences in warranty terms or driving conditions between the markets. In addition, Mazda reported POI warranty expenses divided by the number of sales since the introduction of the MPV in the home market. We recalculated Mazda's warranty expenses to reflect POI experience only by dividing the value of POI claims by the volume of POI retail sales.

We also deducted indirect selling expenses, including inventory carrying costs and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred and commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b). We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Finally, Mazda claimed a level of trade adjustment for price comparisons between home market sales to dealers and U.S. sales to Mazda's U.S. distributor, in accordance with 19 CFR 353.58. We disallowed this claim because Mazda based its claim solely on U.S. experience, failing to provide any home market data necessary to quantify the adjustment. This is consistent with *Fundicao Typy S.A.* v. *United States*, 678 F. Supp. 898 (CIT 1988), aff'd, 859 F.2d 915 (Fed Cir. 1988) (upholding ITA's denial of level of trade adjustment where plaintiffs failed to provide home market data to quantify the adjustment).

Where FMV was based on CV, we calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses and profit. We used Mazda's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated Mazda's reported financing costs to reflect the net interest expense incurred by the consolidated group of Mazda companies.

2. Mazda's reported profit for CV was calculated as the difference between home market minivan sales prices and the total costs incurred for those sales. Included as a cost element were imputed credit and inventory carrying cost figures. We revised the company's home market profit calculation by excluding these imputed figures and replacing them with Mazda's actual financing costs.

In accordance with section 773(e)(1)(B)(i) of the Act, we used Mazda's reported general expenses, adjusted as detailed above, because they exceeded statutory minimum of 10 percent of COM. For profit, since the recalculated home market amount was greater than the statutory minimum of eight percent of COP, we used the revised figure.

We made circumstance of sale (COS) adjustments to CV, where appropriate, for credit expenses, warranty expenses, advertising, and pre-delivery inspection expenses. We also deducted indirect selling expenses, including inventory carrying costs, and other indirect selling expenses. The deduction for home market indirect expenses incurred and commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b).

Toyota

We investigated whether sales by Toyota were made in the home market at less than the cost of production. We compared home market ex-factory sales prices to the COP in all cases. We found that less than 90 percent but more than 10 percent of sales were made at prices above the COP and considered only the above-cost sales as a basis for determining FMV.

We used Toyota's data and calculated the COP as a sum of materials and fabrication of the merchandise sold in the home market, plus general expenses.

Where FMV was based on home market prices, we calculated FMV based on ex-factory prices to related and unrelated dealers in the home market. We made additions to FMV, where appropriate, for cooperative advertising charges, invoice interest revenue, and security deposit revenue. We made deductions, where appropriate, for dealer incentives. We also made deductions, where appropriate, for credit expenses, warranty expenses, advertising expenses, royalties, and handling. For sales for which Toyota has not yet received payment, we recalculated input credit expenses using, as the payment period, the standard payment terms offered other customers in the prefecture of the customer. We also deducted indirect selling expenses (including financial assistance), inventory carrying costs, and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. Sales, in accordance with 19 CFR 353.56(b). We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Where FMV was based on CV, we used Toyota's data and calculated CV as the cost of materials and fabrication of the merchandise exported to the United States plus general expenses and profit.

In accordance with section 733(e)(1)(B)(i) of the Act, since Toyota's general expenses were less than the statutory minimum of 10 percent of COM, we used the minimum figure. For profit, we used the statutory minimum figure of eight percent of COP since Toyota's home market profit was less than that amount.

We made COS adjustments to CV, where appropriate, for credit expenses, advertising expenses, warranty expenses, and royalties. We also deducted indirect selling expenses (including inventory carrying costs), financial assistance, and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our financial determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of new minivans from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage (percent)
Mazda Motor Corporation and Mazda Motor of America, Inc.	7 19
Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	0.95
All others	4.23

Postponement of Final Determination

As noted in the "Background" section of this notice, we received requests from Mazda and Toyota to postpone the final determination in the event this preliminary determination was affirmative. Based upon these requests, we are postponing the final determination of this investigation until not later than 135 days after the date of publication of this preliminary determination in the **Federal Register** in accordance with section 735(a)(2) of the Act.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least 10 copies must be submitted to the Assistant Secretary no later than April 13, 1992, and rebuttal briefs no later than April 17, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing is scheduled for April 20, 1992, at 10 a.m. in room 3708 at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by

telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within 10 days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-31309 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-602]

Certain Stainless Steel Cooking Ware From the Republic of Korea; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent of revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain stainless cooking ware from the Republic of Korea. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2140). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity of Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 24, 1991.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-31316 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-052]

Non-Rubber Footwear From Argentina Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on non-rubber footwear from Argentina. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Mike Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1979, the Department of Commerce ("the Department") published a countervailing duty order on non-rubber footwear from Argentina (44 FR 3474). The Department has not received a request to conduct an administrative review of the countervailing duty order on non-rubber footwear from Argentina for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 27, 1991.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-31315 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-604]

Certain Stainless Steel Cooking Ware From Taiwan; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain stainless steel cooking ware from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Mike Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain stainless steel cooking ware from Taiwan (52 FR 2141). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain stainless steel cooking ware from Taiwan for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 27, 1991.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-31317 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for scientific research permit (P444A).

Notice is hereby given that Messrs. Phillip J. Clapham and David K. Mattila, Center for Coastal Studies, Provincetown, Massachusetts, 02657, have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

Species and Type of Take

The applicant requests a Permit to harass annually, over a three-year period, up to 300 humpback whales (*Megaptera novaeangliae*) in the course of biopsy sampling/photo-identifying up to 200 of those animals. The applicants are also requesting authorization to import and export humpback whale biopsy samples. The proposed research is part of a three-year international collaborative effort to estimate the abundance and structure (both demographic and genetic) of the North Atlantic humpback whale population.

Location of Activity

Activities will be conducted in the waters off western Puerto Rico and the northern U.S. East Coast.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application of the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702.

Dated: December 23, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 91-31306 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of scientific research permit no. 684 (P77#35).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 684 (P77#35) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on July 14, 1989 is modified in the following manner:

The authority to conduct the research shall extend through December 31, 1993.

This modification becomes effective upon publication in the **Federal Register.**

Documents pertaining to this Modification and Permit are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/713-2289); and

Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: December 24, 1991.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-31307 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Survivable High Frequency Radio Antennas

AGENCY: Institute for Telecommunications Sciences (ITS), National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Request for technical descriptions of survivable high frequency radio transmitting/receiving antennas. This information will be used in computer modeling to establish performance characteristics for a fixed station survivable HF radio network. The numerical electromagnetics computer analysis code (NEC-3) will be used in the development of antenna computer models which will in turn be used in IONCAP propagation predictions. The antenna basic requirements are: Frequency range of 2-30 Mhz without any active components; power handling capability of 10 kw at 100% duty cycle; for operation on both short and long-haul paths; VSWR of 1.5:1 or better across the frequency band; protection against EMP effects of 50 KV/m, nuclear blast of 50 psi, and shock of 150 g; minimum temperature range of −40 to +50 deg C; wind survivability of 140 MPH, no ice, of 100 MPH with 12 mm (½ inch) radial ice.

DATES: All offers must be received by ITS no later than 14 February 1992.

ADDRESSES: Technical information on candidate antennas should be submitted to: Nathaniel B. McMillian, U.S. Dept. of Commerce, NTIA/ITS.N1, 325 Broadway, Boulder, CO 80303-3328.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Adair, Institute for Telecommunication Sciences, telephone (303) 497-5116, or Mr. Nick De Minco, telephone (303) 497-3660.

SUPPLEMENTARY INFORMATION: Complete antenna requirements can be obtained from the contact personnel listed.

Dated: December 20, 1991.

Neal B. Seitz,

Deputy Director.

[FR Doc. 91-31179 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

December 27, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1992 limits.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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).

In a notice published in the **Federal Register** on August 13, 1991 (56 FR 38426), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that cotton textile products in various categories, produced or manufactured in China and entered into the United States with the incorrect country of origin in 1989 and 1990 were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended. During consultations held between the Governments of the United States and the People's Republic of China on this matter in August of this year, the Government of the People's Republic of China was advised of ongoing investigations which, in the absence of further consultations, could result in charges to the 1992 limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1992 quota levels for the categories listed below:

Category	Amount to be charged to 1992
331	12,500 dozen pairs.
339	72,930 dozen
339-S [1]	76,348 dozen.
347	7,759 dozen.

[1] Charges to Category 339-S are in addition to those charges being made to Category 339.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register.**

The U.S. Government is taking this action pursuant to the U.S. note dated October 22, 1991, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986 and July 31, 1991.

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) for information regarding the 1992 CORRELATION.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 27, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on January 1, 1992, you charge the following amounts to the following categories for 1992:

Category	Amount to be charged to 1992 limit
331	12,500 dozen pairs.
339	72,930 dozen
339-S [1]	76,348 dozen.
347	7,759 dozen.

[1] Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-31319; Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Export Visa Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 27, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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 Governments of the United States and India agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, for the period which begins on January 1, 1992 and extends through December 31, 1992.

As a result, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend visa requirements for certain textile products, produced or manufactured in India and exported from India on and after January 1, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 27, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India.

Effective on January 1, 1992, you are directed to amend the November 26, 1979 directive to include newly merged Categories 335/635, 340/640, 342/642, 336/636 and 647/648 for goods produced or manufactured in India and exported from India on and after January 1, 1992.

For goods produced or manufactured in India and exported from India on and after January 1, 1992, shipments of merchandise previously visaed as Category 369 must be visaed as Category 369-O [1].

Accordingly, you are directed to permit entry of shipments of textile products in the foregoing categories entered for consumption into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) on and after January 1, 1992, from India which have an appropriate export visa with the correct category, part-category or merged category designation.

Also effective for goods exported on and after January 1, 1992, merged Categories 300/301 and 338/339/340 will no longer be valid.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31318 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] Category 369-O: all HTS numbers except 5702.10.9020, 5702.49.1 10, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); and 6307.10.2005 (Category 369-S).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Clearance No. 9000-0066; FAR Case 90-68]

OMB Clearance Request for Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for a revision to an existing OMB clearance (9000-0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a revision of a currently approved information collection requirement concerning Professional Employee Compensation Plan.

DATES: Comments may be submitted on or before March 3, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78-2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires that a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation. The information collection requirement is being decreased by 28 percent as a result of raising the threshold for requiring total compensation plans from $250,000 to $500,000. The threshold is being raised to adjust for inflation.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 5,340; responses per respondent, 1; total annual responses, 5,340; preparation hours per response, 5; and total response burden hours, 2,670.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

Dated: December 18, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 91–31257 Filed 12–31–91; 8:45 am]

BILLING CODE 6820–JC–M

Defense Logistics Agency

Administration Fee for Electronic Products

AGENCY: Defense Logistics Agency (DLA), Defense.

ACTION: Notification of intent to affix an administration fee for electronic products. Announcement to establish in the annual administration fee for manufacturers and laboratories participating qualified manufacturers list (QML) and qualified products list (QPL) DoD 4120.3M and 10 U.S.C. 2319.

SUMMARY: The proposed notification of intent to establish an annual administration fee for all manufacturers and laboratories participating in the DoD Product Certification and Qualification Program. The administration fee will recover costs associated with the DoD Product Certification and Qualification Program. These costs include operating expenses of the program, including TDY, labor and other attributable expenses.

DATES: Consideration will be given only to comments received on or before 31 Jan. 92.

ADDRESSES: Interested persons may submit written comments concerning this proposal to the Defense Electronics Supply Center (DESC), DESC–EQ, 1507 Wilmington Pike, Dayton, Ohio 25444–5254.

FOR FURTHER INFORMATION CONTACT: Darrell Hill, Chief Qualifications Division, Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, Ohio 45444–5254; telephone (513) 296–6271.

SUPPLEMENTARY INFORMATION: The DoD Product Certification and Qualification Program for electronic parts is managed by the Defense Electronics Supply Center (DESC), as agent for the Military Services, in accordance with the Department of Defense Standardization Manual 4120.3M. In the past, the program has been funded through DESC's Operations and Maintenance account, 10 U.S.C. 2319 specifies that potential offerors reimburse the Government for testing and audit evaluation services required to demonstrate whether the product needs the stated qualification standards.

The administration fee has been derived by determining the actual resources required to administer each product certification and qualification program. The administration fee will be applied to each manufacturer and laboratory site. Each site will have a single fee charged regardless of the number of OMLs/QPLs maintained.

We anticipate the administration fee will be implemented either during FY92 or at the beginning of FY93 (Oct. 92).

Expenses and Assessment Rate

Semiconductor and microcircuits.	
Class S (Space)	$6500.00
All others	5000.00
MIL–STD–790	
Class S (Space)	5500.00
All others	4500.00
Conventional specifications	3700.00
Laboratory	800.00

Robert J. McKittrick,

Colonel, USAF, Director, Engineering Standardization.

[FR Doc. 91–31258 Filed 12–31–91, 8:45 am]

BILLING CODE 3620–01–M–

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 3, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. the Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 27, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Centers for International Business Education Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses—60; *Burden Hours*—2100.

Recordkeeping Burden: Recordkeeping—0; *Burden Hours*—0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Business Education Program. The Department uses the information to make grant awards.

Office of Policy and Planning

Type of Review: New collection.

Title: A Study of Chapter 1 Resources in the Context of State and Local Resources for Education.

Frequency: One-Time Only.

Affected Public: Individuals or households, Non-profit institutions.

Reporting Burden: Responses—1780; *Burden Hours*—1599.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: This study of chapter 1 resource allocation examines a purposive sample of 120 schools in six states selected by degree of equalization across school districts in each state, to determine differences in chapter 1 services between low and high proverty schools and various levels of local funding.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Report of Children in Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden: Responses—52; *Burden Hours*—2,000.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: An annual survey is conducted to collect data on (1) the average daily attendance of children in State-operated or supported schools for neglected or delinquent children and (2) the October caseload of children in local institutions. This data is used in the statutory formula for computing entitlements.

Office of Special Education and Rehabilitative Services

Type of Review: New collection.

Title: Examination of Interpreter Referral and Service Provisions for State and Local Residents who are Deaf or Hard of Hearing.

Frequency: One time Only.

Affected Public: Individuals or households, State or local governments, Non-profit Institutions.

Reporting Burden: Responses—200; *Burden Hours*—50.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: The purpose of this study is to determine the availability and quality of sign language and interpreter referral services and the adequency of interpreter service delivery for persons who are deaf or hard of hearing. The Department will use the information to assess a need for provisions in section 315.

[FR Doc. 91-31293 Filed 12-31-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of state applications for fiscal year 1992.

SUMMARY: The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1992 State allotments under the Paul Douglas Teacher Scholarship Program for scholarships for academic year 1992-93. This program is a federally funded program to provide college scholarships to outstanding high school graduates to enable and encourage them to pursue teaching careers at the preschool, elementary school, or secondary school level.

Authority for this program is contained in title V, part D, subpart 1 of the Higher Education Act of 1965, as amended (HEA).

A State that desires to receive fiscal year 1992 Paul Douglas Teacher Scholarship Program funds must submit an application as provided for under the authorizing law. The State must provide the information requested in section 553 of the HEA and should be guided by the program regulations (34 CFR 653.20). The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) However, a State that submitted an application for Douglas funds in a previous fiscal year and had its application approved by the Secretary, need not submit an application to receive its fiscal year 1992 program allotment. Unless a State notifies the Secretary in writing that it does not wish to continue participation, the Secretary will issue a Paul Douglas fiscal year 1992 allotment to each State for which he has an approved Paul Douglas Program application.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1992 Paul Douglas Teacher Scholarship Program funds must be mailed or hand-delivered by March 4, 1992.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to Mr. Fred Sellers, Chief, State Grant Section, room 4018, ROB #3, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202-5447.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1992 funding.

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: The Secretary requires the submission of an application followed by the approval of that application by the Secretary for a State to receive Paul Douglas Teacher Scholarship Program funds. State allotments are determined by the statutorily mandated population formula and are not subject to negotiation.

APPLICATION INFORMATION: There is no required application form for receiving Paul Douglas Teacher Scholarship Program funds. Applications must be prepared and submitted in accordance with the authorizing law and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

APPLICABLE REGULATIONS: The following regulations are applicable to the Paul Douglas Teacher Scholarship Program:

(1) The Paul Douglas Teacher Scholarship Program final regulations (34 CFR part 653).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

INTERGOVERNMENTAL REVIEW: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A listing containing the single point of contact for each State is included in the appendix to the "Notice Inviting Applications for New Awards for Fiscal Year 1992," published in the **Federal Register** on September 18, 1991 (56 FR 47293–47294).

In States that have not established a process for or chosen this program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, area-wide, regional, and local entities must be mailed or hand delivered by May 1, 1992 to the following address: The Secretary, U.S. Department of Education, room 4181, (CFDA No. 84.176), 400 Maryland Avenue, SW., Washington, DC 20202–0101.

Note: Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, Chief, State Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202–5447; telephone (202) 708–4607.

(Catalog of Federal Domestic Assistance Number 84.176, Paul Douglas Teacher Scholarship Program)

Dated: December 20, 1991.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–31077 Filed 12–31–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES92–20–000, et al.]

Electric rate, Small Power Production, and Interlocking Directorate Filings; UtiliCorp United Inc., et al.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92–20–000]

December 19, 1991.

Take notice that on December 12, 1991, UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act requesting authorization to issue not more than 1 million shares of Common Stock, par value $1 per share, pursuant to the UtiliCorp United Inc. 1986 Stock Incentive Plan and exemption from the Commission's competitive bidding regulations.

Comment date: January 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Long Island Lighting Company

[Docket No. ER92–68–000]

December 23, 1991.

Take notice that on November 26, 1991, Long Island Lighting Company (LILCO) tendered for an amendment to its October 7, 1991 filing the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER92–024–000]

December 23, 1991.

Take notice that on December 6, 1991, the Northeast Utilities Service Company as agent for Connecticut Light and Power Company ("NU") tendered for filing supplemental information regarding a proposed rate schedule which provided for an exchange of entitlements between NU and the Public Service Company of New Hampshire (PSNH).

NU states that the amendment was filed in response to a request by the Commission for additional information.

NU states that a copy of this filing has been mailed to PSNH.

NU requests that the Commission waive its standard notice period and filing notice regulations to the extent necessary to permit the rate schedule originally filed to become effective May 1, 1990.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Co.

[Docket No. ER92–213–000]

December 23, 1991.

Take notice that on December 18, 1991, Tampa Electric Company (Tampa Electric) submitted additional information to supplement and clarify its filing of December 2, 1991, in the above-referenced docket. The information relates to Tampa Electric's commitment to make negotiated sales of available power to the Utility Board of the City of Key West, Florida (Key West) pursuant to Service Schedule J (Negotiated Interchange Service).

Tampa Electric continues to request an effective date of December 4, 1991, for the commitment.

Copies of the supplemental filing have been served on Key West and the Florida Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER92–87–000]

December 23, 1991.

Take notice that West Texas Utilities Company ("WTU"), on December 17, 1991, tendered for filing a Notice of Cancellation in the above-referenced docket. The filing cancels Rate Schedule FERC No. 62 effective January 1, 1990. Pursuant to that Rate Schedule, WTU provided certain transmission service for Texas Utilities Electric Company.

Copies of the filing were posted in accordance with the Commission's regulations.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER92-30-000]

December 23, 1991.

Take notice that on December 11, 1991, PSI Energy, Inc. tendered for filing supplemental information in the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER92-196-000]

December 23, 1991.

Take notice that on December 16, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment to its filing dated November 15, 1991 regarding a proposed change to Niagara Mohawk Rate Schedule No. 140, an agreement between Niagara Mohawk and Orange and Rockland Utilities, Inc. ("O&R").

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER92-195-000]

December 23, 1991.

Take notice that on December 6, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment to its filing dated November 15, 1991 regarding Niagara Mohawk Rate Schedule No. 176, an agreement between Niagara Mohawk and Rochester Gas and Electric Corporation ("RGE").

Comment date: January 6, 1992, in accordance with Standard Paragraph E end of this notice.

9. Florida Power & Light Co.

[Docket No. ER91-693-000]

December 23, 1991.

Take notice that on December 12, 1991, Florida Power & Light Company tendered for filing additional information in the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Co.

[Docket No. ER92-209-000]

December 23, 1991.

Take notice that on November 26, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that extends for one year, through December 31, 1992, an existing Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of up to 200 MW of capacity and associated energy.

Tampa Electric proposes an effective date of January 1, 1992, for the extension, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER91-510-000]

December 23, 1991.

Take notice that PSI Energy, Inc. (PSI) on December 16, 1991, tendered for filing amended Rate Schedules to the FERC Filing in Docket No. ER91-510-000.

Rate Schedules A—Emergency Service, E—Short Term Power and F—Limited Term Power have been revised as a result of a FERC Staff request. In addition, Cincinnati Gas & Electric Company has revised its simulation model and cost support data for the rates in this filing.

Copies of the filing were served on The Cincinnati Gas & Electric Company, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

PSI has requested that the original effective date of June 1, 1991 remain unchanged.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Power & Light Co.

[Docket No. ER92-186-000]

December 23, 1991.

Take notice that on November 15, 1991, Puget Sound Power & Light Company (Puget) tendered for filing a Transfer Agreement between the United States of America, Department of the Interior, acting by and through the Bonneville Power Administration and Puget, Contract No. 14-03-64458, dated September 25, 1968.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Co.

[Docket No. ER92-1-000]

December 23, 1991.

Take notice that on December 10, 1991, El Paso Electric Company tendered for filing an amendment to its November 21, 1991 filing in this docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. PSI Energy, Inc.

[Docket No. ER92-144-000]

December 23, 1991.

Take notice that on December 16, 1991, PSI Energy, Inc. (PSI) tendered for filing an Amendment to its October 31, 1991 filing of the Interchange Agreement between PSI and Baltimore Gas and Electric Company (BG&E) in the above captioned docket. The Amendment consists of further narrative explanations and support for provisions of Service Schedule A Short-Term Power. PSI also withdraws the Power Release Agreement between PSI and BG&E from the filing.

PSI has requested waiver of the Commission's notice requirements to allow an effective date of December 30, 1991 as originally requested.

Copies of the filing were served on the Maryland Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Co.

[Docket No. ER92-113-000]

December 23, 1991.

Take notice that New England Power Company (NEP) on December 17, 1991, tendered for filing Period I and Period II statements and workpapers in support of its proposed transmission rates in response to the Commission's November 15, 1991 deficiency letter.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Iowa Public Service Co., Iowa Power Inc. MWR Power Inc.

[Docket No. EC92-5-000]

December 23, 1991.

Take notice that on December 17, 1991, Iowa Public Service Company (IPS), Iowa Power Inc. (IPR) and MWR Power Inc. (MWR Power) (collectively referred to as Applicants), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), tendered for filing an application for authorization and approval of a merger. Under an existing merger agreement, MWR Power, a wholly-owned subsidiary of Midwest Resources Inc. (Midwest Resources), will acquire all of the outstanding shares of common stock and each class of preferred stock of IPS

and IPR which are also wholly-owned subsidiaries of Midwest Resources. At that time IPS and IPR will cease to exist and MWR Power will be the surviving public utility corporation.

IPS is a combination electric and natural gas utility operating in the states of Iowa, Nebraska, Minnesota and South Dakota. Additionally, IPS transports and sells natural gas through its gas division, Midwest Gas, to retail customers in Iowa, Nebraska, Minnesota and South Dakota. IPS has 12 full or partial wholesale requirements customers, IPR is an electric utility that generates, transmits, distributes and sells electricity in the state of Iowa. IPR has two full or partial wholesale requirements customers.

The Applicants submit that the merger of IPS and IPR into MWR Power will be consistent with the public interest. Accordingly, the Applicants requests authorization to consummate the merger without a hearing.

Comment date: January 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Scranton Energy Partners

[Docket No. QF92-12-000]

December 24, 1991.

On December 18, 1991, Scranton Energy Partners, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure, and design and operational configuration of the facility.

Comment date: January 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31263 Filed 12-31-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB for review of the information collection system described below.

Type of Review: Revision of a current approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064-0052.

Expiration Date of OMB Clearance: May 31, 1994.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,740.

Number of Responses per Respondent: 4.

Total Annual Responses: 30,960.

Average Number of Hours per Response: 23.45.

Total Annual Burden Hours: 725,935.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0017, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3097, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before January 24, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Consolidated Reports of Condition and Income (Call Reports) are used by the FDIC in monitoring the financial condition and performance of reporting banks and the banking industry as a whole. The revisions that are the subject of this request are in the following categories: Other Real Estate Owned by Type of Property; Residential Mortgages Serviced for Others by Type of Servicing Contract; Purchased Credit Cardholder Relationships; Floating Rate Debt Securities Maturing Within One Year; Other Data for Deposit Insurance Assessments.

Dated: December 26, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-31264 Filed 12-31-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act: Property Availability; Caravelle Ranch

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Caravelle Ranch, located in the State of Florida, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until April 2, 1992.

ADDRESSES: All written Notices of Serious Interest must be submitted to Denise Langlois Brown, Legal Department, Federal Deposit Insurance Corporation, P.O. Box 725003, Orlando, Florida 32872-5003, (407) 249-5387, Fax (407) 282-0180.

SUPPLEMENTARY INFORMATION: The property is more fully described as a 5,700.67 acre tract of land located along the east and west sides of State Road 19, approximately 12 miles south of the City of Palatka in Putnam County, Florida. The property is unimproved, heavily vegetated, and has approximately 5,250 feet of frontage along the St. John's River. The property is adjoined by the Ocala National Forest and a parcel owned by the St. John's Water Management District for conservation purposes.

Written Notices of Serious Interest to purchase or effect other transfer of the property must be submitted by April 2, 1992 to Denise Langlois Brown at the above address and in substantially the following form:

Notice of Serious Interest

Re: Caravelle Ranch

This Notice of Serious Interest is tendered in accordance with Section 10 of the Coastal Barrier Improvement Act and publication in the **Federal Register** of Notice of Availability on January 2, 1992 with respect to that property in Putnam County, Florida known as Caravelle Ranch.

The (Name and Address of the Agency or Other Qualified Organization) is eligible to submit this notice under criteria se forth in Public Law 101-591, section 10(b)(2).

The (Name of Agency or Other Qualified Organization) intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows: [INSERT TERMS OF PURCHASE]

Dated: December 27, 1991.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 91-31299 Filed 12-31-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Puget Sound Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than January 24, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. Puget Sound Bancorp, Tacoma, Washington; to acquire 100 percent of the voting shares of Northwestern National Bank, Port Angeles, Washington.

Board of Governors of the Federal Reserve System, December 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31288 Filed 12-31-91; 8:45 am]

BILLING CODE 6210-01-F

Jerry G. and Margaret A. Scott, 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 January 24, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jerry G. and Margaret A. Scott, Seminole, Oklahoma; to acquire an additional 0.53 percent (totalling 25.27 percent) of the voting shares of Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

2. James N. and Mary Ellen Wall, Shawnee, Oklahoma; to acquire an additional 0.53 percent (totallying 25.27 percent) of the voting shares of Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

Board of Governors of the Federal Reserve System, December 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31289 Filed 12-31-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-103-PN]

Medicare Program; Data, Standards and Methodology Used To Establis' Fiscal Year 1992 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice describes the data, standards and methodology that would be used to establish fiscal intermediary and carrier budgets for the fiscal year beginning October 1, 1991. Intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing claims processing and benefit payment functions. This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which require us to publish for public comment the data, standards and methodology we intend to use to establish budgets for Medicare intermediaries and carriers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 3, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-103-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, video or facsimile (FAX) copies of comments. In commenting, please refer to file code BPO-103-PN. Written

comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Tom Hessenauer, (301) 966-7542.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act. Intermediaries perform claims processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform bill processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance). When claims are submitted by providers, and bills by beneficiaries, physicians, and suppliers of services, intermediaries and carriers are responsible for: (1) Determining the eligibility status of a beneficiary; (2) determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and (3) making appropriate payments to the provider, beneficiary, physician, or supplier of services.

Intermediary and carrier performance is monitored by HCFA on both the central office and regional office (RO) levels. In general, issues that affect policies on a national level are addressed by the central office, and issues dealing with regional and local policies, as well as those of an operational nature, are addressed by the ROs. Communication between HCFA and the intermediaries and carriers is continuous, with established consultation workgroups comprised of representatives from the central office, ROs and Medicare contractors meeting on a regular basis.

II. Fiscal Intermediary and Carrier Budget Process

HCFA's central office is responsible for developing a national contractor budget for both Part A and Part B of the Medicare program. The budget is formulated over a 15-month period, beginning in March of the year preceding the fiscal year (FY) to which it applies. It is formulated after receiving input from the contractor community, HCFA's ROs, various central office and departmental components, and the Office of Management and Budget (OMB), prior to submittal to the President for approval and forwarding to Congress. Once the national contractor budget has been approved, HCFA issues Budget Performance Requirements (BPRs), which serve as guidelines for contractors in preparing their individual budgets for submission to HCFA.

In the past, we have used ROs to obtain budget estimates from the contractors to use as a basis for developing the national budget. The ROs' assessments of the contractors' needs are reviewed during a budget level determination process based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by Congress. We subsequently allocate funding within these constraints.

Section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, amended sections 1816(c)(1) and 1842(c)(1) of the Act by requiring the Secretary to publish in the **Federal Register** by no later than September 1 before each FY, the final data, standards and methodology to be used to establish a national contractor budget for fiscal intermediaries and carriers under these sections for that FY. We also are required to publish our proposed data, standards and methodology at least 90 days before September 1 to provide an opportunity for public comment.

We have been unable to meet the statutory mandate to publish a proposed notice at least 90 days before September 1. Although we have not published the proposed notice within the timeframe contemplated by the statute, we nevertheless want to assure interested parties that they will be provided an adequate opportunity to comment on the data, standards, and methodology to be used to establish budgets before they are issued in a final notice.

Additionally, as in prior years, we have had and will continue to seek extensive input from the involved parties, particularly contractors. Their input is used as part of the basis for the national contractor budget that was presented to Congress. That budget is the basis for the contents of this notice. Therefore, we do not believe that the delay in publishing this proposed notice will disadvantage the contractors as they have already been apprised of the contents of this document via meetings, written correspondence, and telephone calls. The delay will neither diminish the depth of the consultation nor the negotiation with the parties most affected by this notice. After allowing a 30-day comment period and evaluating the comments on the proposed notice, we will publish the final notice as near as possible to September 1.

To the extent that the comments we receive during this comment period warrant revisions to the proposed data, standards and methodology, we will make the necessary changes before publishing the final notice. Moreover, if appropriate, we will issue revised BPRs to intermediaries and carriers. We will also renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by Congress.

This notice contains our proposed data, standards and methodology that we intend to use to establish a national contractor budget for fiscal intermediaries and carriers for FY 1992.

III. Overview of FY 1992 National Medicare Contractor Budget: Data, Standards and Methodology

The FY 1992 Medicare contractor budget request was submitted to Congress in February 1991. The workload for the FY 1992 request is expressed in terms of work processed. For Part A, the FY 1992 estimated workload (99.4 million bills) is 8.0% more than the FY 1991 workload. For part B, the estimated workload (569.6 million claims) results in a 13.9% increase over the FY 1991 workload.

Our estimates involved the use of a regression model that uses the last 36 months of actual contractor workload data. The software runs the historical data through five different statistical models, selects the one best suited to the characteristics of the data, and provides a forecast using that model. For the FY 1992 projections, we used January 1991 data, which were the latest available to us at the time. The resulting projections will be updated monthly to assure that the most timely data are available for budgeting purposes.

Based on the projected FY 1991 unit costs for processing bills and claims, we applied a 3.9 percent inflation factor (the economic assumption used by OMB based on changes to the Consumer Price and Wage Indexes as developed by the Department of Labor). This amount was then further adjusted for savings achieved by prior and anticipated productivity investments, and costs

associated with new legislation. This calculation resulted in a new unit cost, which, when multiplied by the Part A and/or Part B workloads, shows the total amount to be earmarked for bills and claims payment in FY 1992.

Feedback received from contractors and ROs during the past several years have led us to believe that contractors can make major improvements in performance if given the authority to manage their budgets. The FY 1992 BPRs give the ROs the authority to set such a budget and the contractors the authority to manage their budgets on a bottom-line basis. Once funding is issued, each contractor will have the flexibility to optimally manage the budget consistent with the scope of work contained in the BPRs. In past years, contractors were not allowed to "shift" more than 5 percent of funds from one line item to another in their budget, as determined by the lesser of the two line items. This restriction was intended to give contractors some latitude with regard to reporting their costs, yet still allow HCFA to maintain control over the national budget. With the exception of the Payment Safeguards, Productivity Investments and Other line items, contractors now will have total flexibility in the use of funds. However, the current 5 percent shift (into or out of) limitations on individual payment safeguards will be maintained. Productivity Investments and Other line funding not governed by contract modifications may be shifted to other functions not to exceed 5 percent, but funding governed by contract modifications may not be shifted to other functions or lines.

A. Medicare Contractor Functional Areas

The Medicare contractor budget consists of seven functional area responsibilities performed by intermediaries for Part A, and eight functional area responsibilities performed by carriers for Part B. The functional area responsibilities for Part A are:

1. Bills Payment;
2. Reconsideration and Hearings;
3. Medicare Secondary Payer;
4. Medical Review and Utilization Review;
5. Provider Audit (Desk Reviews, Field Audits and Provider Settlements);
6. Provider Reimbursements; and
7. Productivity Investments.

The functional area responsibilities for Part B are:

1. Claims Payment;
2. Reviews and Hearings;
3. Beneficiary/Physician Inquiries;
4. Medical Review and Utilization Review;
5. Medicare Secondary Payer;
6. Participating Physicians;
7. Professional Relations; and
8. Productivity Investments.

These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds. The data, standards and methodology used in these functional areas are discussed in section IV of this preamble. In the following national budget summary, we have combined the discussion of functional areas common to both intermediaries and carriers. However, data specific to Part A and Part B are provided under each heading.

1. Bills and Claims Payment

We currently estimate the Part A processed workload to be 99.4 million bills in FY 1992. This estimate results from a workload regression model that uses the last 36 months of intermediary data through January 1991 and the current funding available for processing claims. This workload level includes 2.3 million claims related to pap smears, as provided for in section 6115 of the Omnibus Budget Reconciliation Act of 1989, (OBRA '89), Public Law 101–239, and 2.3 million claims related to injectable drugs for osteoporosis and mammograms, as provided for in sections 4156 and 4163 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508.

The part B processed workload is currently projected at 569.6 million claims based on the current funding available. This workload level includes 4.5 million claims as provided for in OBRA '89, and 4.6 million claims as provided for in OBRA '90.

Intermediaries are required by section 1816(c) of the Act (as amended by section 9311 of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law (99–509) to pay 95 percent of part A bills within 24 days of receipt. All part B claims must be processed within the same time frames as part A bills, except that participating physician claims must be paid within 17 days of receipt.

Section 4031 of OBRA '87 amended sections 1816(c) and 1842(c) of the Act to impose a 14-day payment floor standard effective October 1, 1988 for part A bills and part B claims. This standard provides that no payment may be made within 14 calendar days after the date that the bill/claim is received. The statutory requirement for this provision expired on September 30, 1989. However, HCFA has administratively retained the 14-day floor through publication of a notice in the Federal Register on December 11, 1989 at 54 FR 51008.

Additionally, section 4031 also prohibited the Secretary from issuing before October 1, 1990, other regulations, instructions or policies intended to delay Medicare payments. Subsequently, section 4207(b)(2) of OBRA '90 permanently prohibits changes intended primarily to slow down or speed up claims processing or delay payment of claims.

2. Reconsiderations (Reviews Under Part B) and Hearings and Beneficiary Inquiries

This function includes all activities related to guaranteeing due process of law as a result of contractor action (i.e., disallowances) on bills and claims.

Section 4032 of OBRA '87 amended section 1816(f) of the Act to require that intermediaries process 75 percent of reconsiderations within 60 days, beginning in FY 1990. As a result of the FY 1990 funding levels, we reevaluated the reconsideration, review, and hearing processes with the aim to further increase efficiency. For FY 1992 we expect to achieve reduced costs through expanded use of on-the-record and telephone hearings, and through the use of audio response units (ARUs) to replace labor-intensive methods of answering inquiries.

3. Medicare Secondary Payer

The Medicare Secondary Payer (MSP) function is the first of three initiatives (Medicare Secondary Payer, Medical Review and Utilization Review, and Provider Audit) we developed as "Payment Safeguards" in an attempt to safeguard the Medicare program against improper payments. The focus of the MSP initiative is to ensure that the Medicare program pays for covered care only after reimbursement from primary insurers has been made. MSP activities center on claims involving—

- The working aged;
- The spousal working aged;
- Beneficiaries with end-stage renal disease;
- Beneficiaries eligible for payment under automobile, medical liability and no-fault insurance;
- Individuals eligible for or receiving workers compensation; and
- The disabled.

By concentrating efforts in these key areas, the Medicare program has had tremendous success in recovering and reducing improper program payments.

Medicare contractors are responsible for identifying MSP situations and aggressively pursing the recovery of improper payments from the appropriate

party. The standard for determining the amount of MSP funding a contractor will receive in FY 1992 is based on savings goals, workload volumes, required systems changes, and any special projects that may be assigned to contractors.

In conjunction with the actuary, we develop specific savings goals for each contractor based on past performance. In addition, we gather data on actual MSP claims volumes, overall claims volumes for the prior FY, and special project data (e.g., cost of claims, amount of savings achieved). We then compare a contractor's previous year's data to the contractor's projections for the next FY and allocate funding in proportion to the savings goals to be achieved. Additional funding is allocated for specific projects as required. The amounts vary based on the scope of the project, extent of systems changes, if any, and workload.

For FY 1992 we have included funding to implement the IRS/SSA/HCFA data match project created by section 6202 of OBRA '89.

4. Medical Review and Utilization Review

In addition to processing and paying claims from providers of services and Medicare beneficiaries, contractors perform medical reviews of claims to determine whether services were medically necessary and constituted an appropriate level of care. The distribution of Medicare contractor funding is in proportion to workload, individual contractor medical review/utilization review (MR/UR) projects, and the budget constraints brought about by reduced funding availability.

Intermediaries are responsible for medical review of home health agencies (HHAs), skilled nursing facilities (SNFs), outpatient hospital services (excluding surgery), and other outpatient services such as those provided by rehabilitation facilities, rural health clinics, etc. This review assures that medical care received is necessary and appropriate, and that quality medical services are delivered to Medicare beneficiaries. We estimate that the review of HHAs and outpatient services will account for most of the use of Medicare intermediary medical review resources during FY 1992. Medical review of all HHA provider claims will be the responsibility of regional home health intermediaries.

Carriers are responsible for medical review of Part B providers and suppliers. Carrier medical review costs can be offset by avoiding payment for medically unnecessary services through proper medical review/utilization review. To this end, we will continue to focus on prepayment review, including additional mandatory prepayment screens, and continue our efforts in the standard cost analysis system developed in FY 1987 to evaluate the efficiency of carrier prepayment medical review screens. This systematic approach is expected to yield benefits to the medical review process, such as—

- A current inventory of the number, types, and cost effectiveness of medical review screens;
- The ability to analyze the current inventory of screens and set a framework that yields a high return on investment;
- The ability to target strategies for specific medical review activities; and
- Measurement of the relative cost effectiveness of screens among different contractors.

In addition to our continued focus on prepayment review, we also will direct attention in the area of carrier postpayment medical review during FY 1992. The carrier postpayment process consists of preparing profiles of providers and beneficiaries, identifying patterns of fraud and abuse, correcting program abuse in service utilization by educating providers in acceptable norms and proper billing practices, recommending administrative action, where appropriate, and identifying areas for the development and installation of future prepayment review screens.

The actual and cost avoidance benefits in safeguarding program dollars are significant. Educational encounters lead to fewer incorrect billings and administrative cost avoidance in the form of reductions in the number of requests for reviews and hearings. In FY 1992 we will continue to focus on—

- Review of providers with demonstrably aberrant billing and practice patterns;
- Review of educational efforts; and
- Development of a methodology for quantifying the level of program and administrative cost avoidance resulting from postpayment medical review activities.

Also during FY 1992, an analytical diagnosis-based approach to identification of services targeted for more intensified medical review (i.e., patterns of care) will be implemented nationally. Funding for this project is provided for carrier staff review of the system rather than development, which will be accomplished in FY 1991. We estimate that 20 percent of FY 1992 prepayment medical reviews will be diagnosis related.

Carriers must continue to provide support to HHS/Office of Inspector General (OIG) staff in investigating cases of suspected fraud and abuse This is in addition to the fraud and abuse activities that currently exist in other intermediary and carrier functions.

5. Provider Audit

For FY 1992 we have planned for the full complement of audits to help in the identification and prevention of improper payments. These will include desk reviews, field audits, special audit activities and final settlements. Considering provider growth and the increase in cost-based reimbursement to prospective payment system (PPS) hospitals, we will continue to give priority to the audits of PPS multi-facility hospitals as well as chain-affiliated providers. In addition, by concentrating effort on HHAs and SNFs which meet minimum audit criteria, we will maximize the potential savings available from these providers. We will also focus audit efforts on costs reported and allocated by home offices, since there are numerous incentives for chain home offices to maximize reimbursement through creative cost allocation practices.

6. Provider Reimbursement (Part A only)

In FY 1992 Medicare contractors are required to provide reimbursement services to 29,659 health care providers. This represents an increase of approximately 14 percent over the number of providers requiring reimbursement services in FY 1991. Reimbursement services are required for provider-based SNFs and HHAs in addition to end stage renal disease (ESRD) facilities, comprehensive outpatient rehabilitation facilities (CORFs), and hospices, regardless of whether the provider is audited on an annual or other basis. The budget provides for the following activities:

- Collection of Provider Overpayments—A system must be maintained to collect and record overpayments made to providers. In addition to collections and recordkeeping activities, contractors will investigate and provide profile data on uncollectible overpayment cases and provide monthly reports to HCFA on the uncollectible accounts.
- Interim Payments—Interim Payment rates must be established and periodically reviewed throughout the FY for all Medicare providers. The interim rates process requires the review of provider cost and utilization statistics and the calculation of adjusted rates.
- Consultative Services—On-site assistance must be furnished to any provider experiencing difficulties in

preparing the cost report, preparing claims or any other payment area.

• Records and Reports—According to specific instructions from HCFA, files and records must be established and maintained by the contractors to ensure proper payments to providers. In addition, several different provider cost and payment reports must be prepared and submitted quarterly to HCFA.

• System Tracking for Audit and Reimbursement (STAR)—The STAR system collects data on individual provider identification such as name, provider number, number of beds/visits, etc. The system also collects all data on the cost of Medicare contractors performing audit and reimbursement functions, including interim rate setting, desk reviews, settlements and field audits. The STAR system will be integrated with other data retrieval systems to eliminate duplicate reporting and to establish one data base for information reported by intermediaries.

In determining the amount of reimbursement funding each contractor receives, we analyze provider profiles submitted by contractors. The provider profiles show types and numbers of periodic interim payment (PIP) providers and non-PIP providers. We review prior periods of reimbursement funding and assess the contractor's future needs based on projected provider workload and the availability of funds. We make every attempt to distribute funds in proportion to workload.

7. Productivity Investments

The costs of implementing new initiatives designed to improve the effectiveness of Medicare program administration are referred to as productivity investments (PIs). Productivity investments generally provide start-up funds for contractor activities. Once these projects are operational, funding for these projects becomes part of the contractor's ongoing costs. The criteria for selection of PIs to be implemented are varied. For example, some PIs are required by legislative or regulatory requirements. We also fund projects that will improve administrative cost efficiency, e.g., the Common Working File and Shared Maintenance/Shared Processing.

There is no single distribution methodology for the allocation of PI funds. After we determine the national cost of a PI, funds are distributed among the contractors based on either the contractors' cost estimates or through formulas derived by HCFA based on project specifications. Other PI initiatives require equal effort by all contractors regardless of size, and are, therefore, distributed equally among contractors. Finally, other PIs, such as the Common Working File and Shared Maintenance/Shared Processing, are given only to contractors that are involved in the specific projects.

In FY 1992, we will fund the following PIs:

For Part A—

• Common Working File;
• Shared software maintenance;
• Shared claims processing;
• Quality assurance program initiatives;
• Facilities management; and;
• OBRA '90 systems initiatives.

For Part B—

• Common Working File;
• Shared software maintenance;
• Shared claims processing;
• Quality assurance program initiatives;
• Revised HCFA-1500;
• Beneficiary initiatives;
• Facilities management;
• Electronic media claims;
• Physician Ownership and Referral;
• Medicare Fee Schedule Implementation;
• Standardized Edit Package; and
• OBRA '90 systems initiatives.

8. Beneficiary/Physician Inquiries

The Medicare program is a complex one, based on many provisions required by law, regulations and policy dealing with entitlement, coverage of services, comprehensive payment rules, and the rights and responsibilities of beneficiaries. Since contractors are the direct link between beneficiaries, physicians, and the program, this activity includes all costs related beneficiary, physician and supplier inquiries generated by means of telephone calls, correspondence, and personal visits. This workload is estimated to be 30.4 million inquiries in FY 1992. Current contractor performance and evaluation criteria and standards require that inquiries be processed within 30 calendar days. For telephone inquiries, the level of service for a busy signal must equate to an "all trunks busy" of no higher than 20 percent. All calls must be acknowledged in no more than 20 seconds and must be handled by a telephone representative within 120 seconds of acknowledgement. The standards require that 80 percent of the calls be handled to completion during the initial call and that call backs be made within 2 working days. These standards apply to both toll free and local calls. For FY 1992, we expect to achieve reduced costs through the use of ARUs to replace labor-intensive methods of answering inquiries.

9. Participating Physicians (Part B only)

Participating physicians are those who agree to accept assignment on all Medicare claims in return for certain incentives/benefits. All physicians must be given an opportunity to enroll/disenroll in the participation program annually.

The participating physician program for carriers includes the following activities:

• Monitoring Maximum Allowable Actual Charges (MAAC);
• Producing and distributing Medicare Participating Physician Directories (MEDPARDS);
• Monitoring nonparticipating physicians for compliance with section 1842(m) of the Act, as added by section 9332(d) of OBRA '86;
• Monitoring participating physicians;
• Furnishing toll-free electronic media claims lines for participating physicians;
• Responding to participation-related inquiries from beneficiaries in a timely and responsive manner;
• Enrolling participating physicians and suppliers;
• Monitoring systems changes for pricing screens and files related to the participating physician program; and
• Monitoring data requests (participation counts).

When the Congress initially provided funding for the participation program, we identified each of the activities involved and priced each activity nationally. An algorithm was developed for distributing the funds to each contractor for each activity. Some algorithms distributed funds based on workload and others based on the number of sites with systems changes. One activity was funded based on the participation rates. We then totaled the cost of the various activities for each carrier and provided funding accordingly. For FY 1992, the FY 1991 funding was used as the base and was increased proportional to the workload within the limits of the funding available to HCFA.

Section 9332 of OBRA '86 requires HCFA to pay carrier bonuses for increasing the rate of physician participation in the Medicare program. The methodology used to determine carrier bonuses for FY 1992 will be published in a separate notice.

10. Professional Relations

The success of the Medicare program depends upon the continuing cooperation of individuals and institutions providing health care services. To help promote this cooperation, carriers are required to—

• Notify physicians and suppliers, in writing, of policy and procedural changes prior to the effective dates of changes;

• Develop claims prior to denial or reduction;

• Initiate regular contact with physicians/suppliers through representative organizations;

• Provide regular and periodic training for new personnel, as well as a continuing education program for previously trained staff, on current Medicare coverage, reimbursement, and billing policy;

• Conduct regular meetings with beneficiaries or their representative organizations to inform them about the participation program; and

• Provide adequate telephone service in order to answer queries concerning claims status and processing questions.

The funding provided in FY 1992 will allow carriers to perform the above activities, as well as those outlined in section 4600 of the Medicare Carriers Manual. Funding is also included for the enforcement of proper diagnostic coding of claims, identification of referring, ordering and furnishing physician services, and other provisions as required by OBRA '89.

11. Printing Claims Forms

Although this activity is not among the seven contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, intermediaries and carriers supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential to beneficiary notification, effective and efficient contractor operations, and other program objectives. With a steady increase in the number of beneficiaries and providers, we project a corresponding increase in a substantial number of HCFA forms.

B. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. FY 1992 is the first year in which we have developed a bottom lone unit cost for each individual contractor. These bottom line unit costs encompass all contractor functions except Audit (Part A only), Productivity Investments, and Other.

Also new in FY 1992 is the application of the Complexity Index (CI). The CI is designed to improve efficiency and reduce contractor-by-contractor cost inequities, and is based on the application of the Industrial Engineering (IE) Study commissioned by HCFA. The IE study provided HCFA with an actual, weighted unit cost for each type and medium of bill and claim. For example, a Part A contractor typically processes (among others) inpatient hospital bills. These bills either are received as hardcopy or are electronically submitted.

The IE study produced an actual unit cost that is associated with processing a hardcopy inpatient bill versus an electronically submitted inpatient bill. The study did the same with every type and medium of bill and claim processed by contractors. These unit costs were applied to each contractor's individual workload mix to develop a weighted unit cost that reflects the complexity of its workload mix. We determined the workload mix for each contractor by calculating the proportion of its work by bill/claim type and medium for the October–January 1991 time period. Since each contractor has a percentage goal in FY 1992 for electronically transmitted claims, we adjusted the workload mixes to reflect achievement of the goals.

We developed the CI by identifying the contractor with the least complicated FY 1991 workload mix and therefore the lowest weighted unit cost. Each individual contractor's unit cost was divided by this contractor's unit cost to calculate its CI. The CI was multiplied by the contractor's actual FY 1990 workload volume in order to weight the workload for the appropriate level of complexity and to develop its Equivalency Work Units (EWUs).

In order to develop each contractor's final bottom-line unit cost for FY 1992, we divided its EWUs into its actual FY 1990 costs, adjusting for various savings and the postage increase. We then arrayed the contractors' unit costs per EWU and identified the contractor at the 70th Percentile. Each contractor with a unit cost per EWU higher than the 70th Percentile was held to this unit cost multiplied by the contractor's own CI. Each contractor at or below the 70th Percentile retained its own unit cost per EWU multiplied by its own CI. As a final step, we adjusted each Part B contractors' bottom-line unit cost to reflect the savings that we expect to realize as a result of several new HCFA policies to be implemented in FY 1992.

In their budget negotiations with the contractors, the ROs cannot exceed this bottom-line unit cost. The total FY 1992 budget (excluding Audit, PI and other) for each contractor will be established by multiplying the bottom-line unit cost by the contractor's projected workload volume. However, each RO is also responsible for allocating between its contractors the General Savings (as described in the BPRs) that we must realize to accommodate our budget limitations in FY 1992. Therefore, while the RO cannot exceed the bottom-line unit cost discussed above, it can adjust the unit costs downward at its discretion to realize the General Savings.

IV. FY 1992 National Medicare Contractor Budget: Standards, Data, and Methodology

After the President's FY 1992 Medicare contractor budget request was submitted to Congress in February 1991, we proceeded to develop budget and performance requirements to be issued to the contractors. These requirements outline the scope of work that intermediaries and carriers are expected to perform during the upcoming FY in each of the functional areas for which they are responsible.

In May 1991, the draft budget and performance requirements were issued to the ROs. Final individualized requirements were sent to each intermediary and carrier in early June to provide assistance in preparing their FY 1992 budget requests. The ROs added information pertinent to intermediaries and carriers within their own region. Intermediaries and carriers must submit their budget requests to HCFA no later than six weeks after the issuance of the budget performance requirements.

While intermediaries and carriers are preparing their budget requests, the Division of Contractor Financial Management within HCFA will develop preliminary budget allocations for the functional areas based upon historical patterns, workload growth/inflation assumptions, and any other available relevant information. Both central office and RO staff will review intermediary and carrier budget requests as they are submitted. RO staff will discuss the differences between the intermediary and carrier requests and the allocations derived by HCFA, and negotiate with each intermediary and carrier a final, mutually acceptable budget within the limits of the funding available to HCFA. The central office prepares a Financial Operating Plan (FOP) for each RO that provides total regional funding authority for each functional area. The ROs in turn prepare a Notice of Budget Approval (NOBA) for each intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

The basic scope of work, along with new and special activities that intermediaries and carriers will be

expected to perform, are described in the budget and performance requirements package, which was distributed in draft form to the ROs in May 1991. Intermediaries and carriers are expected to perform the work as described in the budget and performance requirements package and in accordance with the standards included in the Contractor Performance Evaluation Program (CPEP) for FY 1992. For consideration in developing their initial budget requests, a draft copy of the CPEP standards was sent to contractors in May 1991. Final FY 1992 CPEP standards will be published in the **Federal Register.**

B. Data

In developing the individual intermediary and carrier budgets for FY 1992, we will utilize the following sources of data that contain various workload volumes, functional costs, and manpower information:

- Forms HCFA-1523/1524 (a multipurpose form which serves as the Budget Request, Notice of Budget Approval and Interim Expenditure Report);
- Forms HCFA-1523/1524A (Schedule of Productivity Investments and Other);
- Forms HCFA-1523/1524B (Schedule of Credits, EDP and Overhead);
- Forms HCFA-1523/1524C (Schedule of Appeals);
- Forms HCFA-1523/1524D (Schedule of MSP Costs);
- Forms HCFA-1523/1524E (Schedule of MR Costs);
- Forms HCFA-1525/1525B (Contractor Audit Settlement Report (CASR));
- Schedules A, B & C;
- Audit Priority Matrix;
- Crossover from CASR to Audit Priority Matrix;
- Provider Reimbursement Profile;
- Schedule of Providers Serviced;
- MSP Savings Report;
- MR/UR Savings Report;
- Form HCFA-2580 (Cost Classification Report);
- Form-3529 (Facilities and Occupancy Schedule);
- Forms HCFA-1565/1566 Carrier Performance Report/Intermediary Monthly Workload Report;
- HCFA Actuary's Workload Estimates;
- OMB's Economic Assumptions of 3.9 Percent;
- Industrial Engineering Study;
- Savings from Prior Productivity Investments;
- New Legislation Costs;
- Regional Office Recommendations; and
- Contract Provisions.

C. Methodology

The Medicare contractor budget is built around the previously listed seven major functions performed by intermediaries for Part A and eight major functions performed by carriers for Part B. The FY 1992 budget is the first year in which we have developed a bottom-line unit cost for each individual contractor. However, each contractor's bottom-line unit cost associated with the Complexity Index described in section III.B of this preamble takes precedence over these various line item unit costs. The ROs cannot exceed these bottom-line unit costs in their budget negotiations with the contractors. The following narrative describes the methodology used to calculate individual line item costs. This methodology will be considered as general reference for contractors as they develop their FY 1992 budgets, and also to provide additional explanation in determining how certain costs and savings were determined. These individual line item costs should be viewed as tools to guide the ROs in their contractor negotiations.

1. Bills and Claims Payment

The individual intermediary and carrier workload levels for FY 1992 (subject to the national workload levels and approved funding) are determined by the ROs based upon regional forecasted totals that are derived from a statistical forecasting model. We are also projecting the number of bills/claims an intermediary and carrier expect to have pending at the end of the FY 1991 using the same data. We then combine the FY 1992 receipt estimate with the anticipated end of FY 1991 pending level, and subtract the estimated FY 1992 pending for each intermediary and carrier to establish a processed workload (i.e., Estimated FY 1992 receipts + Estimated end of FY 1991 pending − Estimated end of FY 1992 pending = Estimated FY 1992 Processed Workload).

In order to price individual contractor bills/claims workloads, we develop a unit cost that is the cost of processing a single bill/claim. The individual intermediary and carrier unit costs for FY 1992 are calculated based upon unit costs (line 1 of the FY 1990 Final Administrative Cost Proposal). The calculations include increases to recognize the cost of new legislation, and 3.9 percent for price inflation. Reductions associated with the application of the IE study and savings achieved from the Common Working File and other prior PIs will also be part of the formula employed in computing FY 1992 target unit costs. The ROs will negotiate with intermediaries and carriers to resolve any differences within the limits of the funding available to HCFA.

2. Reconsiderations (Reviews Under Part B) and Hearings

We will allocate funding based on the amount of dollars spent (line 2 of HCFA-1523/1524) in the prior years, adjusted for inflation and volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the percentage change in inflation, which for FY 1992 is a 3.9 percent increase (a rate that reflects productivity gains generally for the economy, but which may cause over/understatement of costs depending on the productivity efficiencies experienced by the individual contractors), and for the percentage change in workload. We have revised Forms HCFA-1523/1524C to allow us to capture more discrete workload and cost data.

We will use these data to develop budgeted costs for reconsiderations and hearings as we do for bills payment and claims payment costs, that is, forecasted processed volume times unit cost. The individual intermediary and carrier budget allocations for reconsiderations, reviews, and hearings are determined by using the old methodology. If sufficient reliable data are collected, then we may redetermine the allocations by multiplying anticipated workload levels in FY 1992 times the newly developed unit cost. We will consider the current pending workload and projected receipts for each intermediary and carrier.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

3. Beneficiary/Provider Inquiries (Part B only)

In order to establish a budgeted amount for beneficiary and provider inquiries, the prior year's cost is adjusted for the percentage change in inflation, which for FY 1992 will be a 3.9 percent increase, as well as any projected workload increase or decrease. We also consider special conditions unique to specific carriers in negotiating the budget. We are now developing new reporting requirements that will allow us to capture more discrete workload and cost data. Until we have sufficient reliable data under the new reporting system, we will use the old budgeting methodology. We may

use the data to develop a budgeted cost for beneficiary/provider inquiries by multiplying forecasted processed volume times unit cost.

The ROs will negotiate with the carriers to resolve any differences between the HCFA allocations and carrier's requests, within the limits of the funding available to HCFA.

4. Provider Reimbursement (Part A only)

In determining individual intermediary budgets for reimbursement activities, we first calculated an FY 1991 unit cost using the funding included on the latest FY 1991 NOBA (HCFA 1523) and divided that amount by the workload reported on the Schedule of Providers Serviced (SPS) for the same period. The SPS is a listing of all the facilities serviced by the intermediary. This report offers a more detailed description of the providers because it identifies them by type, bed size, freestanding or provider-based, and whether they are paid on a periodic interim payment basis. The SPS is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the intermediary and any change reported between FYs.

The unit cost found by dividing the amount of the FY 1991 NOBA by the workload from the SPS for the same period forms the first of the "raw" data used to project the FY 1992 budget. This unit cost is increased by 3.9 percent, which is the rate of inflation provided to HCFA by OMB. This adjusted unit cost is then multiplied by the FY 1992 workload as reported on the SPS. The result is then adjusted based on a review of cost documentation of special initiatives.

In order to resolve major differences between the intermediary's budget request and the amount developed by the preceding approach, we analyze the reimbursement profile that is an addendum to the budget request. This profile shows the cost claimed by type of reimbursement activity (Interim Rate Determinations, Overpayment Recoupment, Consulting Services, etc.).

The ROs will negotiate with the intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

5. Provider Audit (Part A only)

For FY 1992, the provider audit function is divided into three major activities: field audits, desk reviews, and settlements. The basic report on all audit analyses is based on the Contractor Auditing and Settlement Report (CASR) (HCFA-1525/1525A). This form provides a breakout of audit activities and costs by type of provider, and documents the savings incurred as a result of audit activity. Using this as a base, the desk review costs are developed by projecting the workload using the total count of providers serviced. (All cost reports must be desk reviewed.). The count of providers serviced is compared to the total shown on the Schedule of Providers Serviced for verification. We then multiply this count by the unit cost per desk review (developed for the fastest CASR for FY 1991) to determine the cost of handling the FY 1992 workload at the FY 1991 unit cost.

Settlement costs are based on the workload projected in the intermediary's budget request multiplied by the unit cost for settlements found in the most recent CASR for FY 1991. This will cost out the FY 1992 activity at the FY 1991 level of expenditure.

The overriding priority of all audit efforts is the special activities required by legislation. The second priority is that all cost reports be desk reviewed and, to the extent possible, settled. All of the above costs are adjusted for inflation, which for FY 1992 will be a 3.9 percent increase.

The ROs will negotiate with intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

6. Medicare Secondary Payer (MSP)

We will extract data, including processed volumes, costs and program savings, from the HCFA-1523/1524D and the MSP Savings Report (HCFA-1563/1564) to determine MSP funding allocations. These reports will include IRS/SSA/HCFA data match costs, volumes, and savings. In allocating the FY 1992 MSP budget to individual intermediaries and carriers, we consider (1) estimated potential savings goals by category and by State (e.g., working aged and spousal working aged insurance, automobile, medical liability and no-fault insurance, end-stage renal disease, disability, and workers compensation); (2) the relationship of available funds to expected savings among contractors; and (3) staffing mix differences, levels of systems sophistication, and special tasks. The ROs will consider items (1), (2), and (3) of this paragraph when negotiating with intermediaries and carriers within the limits of the funding available to HCFA.

7. Medical Review/Utilization Review (MR/UR)

The individual intermediary and carrier MR/UR budgets for FY 1992 will be calculated in three segments: prepayment medical review, postpayment activities, and medical review policy development (carriers only). As part of the BPRs, we asked intermediaries and carriers to estimate (1) the number of bills/claims to be processed by bill types, and (2) the required funding. We will allocate to each contractor prepayment and postpayment medical review funding based upon the workload that an intermediary or carrier projects will be processed under the FY 1992 budget guidelines for medical review and the funds requested by the intermediary or carrier to perform the reviews. Carrier budgets for medical review policy development are based on levels of sophistication of carrier policy development and dissemination and the need for medical direction. The funding calculations for all MR/UR activities will include a 3.9 percent factor for price inflation where applicable.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

8. Participating Physicians (Part B only)

In determining the individual carrier funding levels for the participating physician program for FY 1992, we considered the following factors: The number of physicians in the carrier's service area; the carrier's current participation rate; the carrier's recent performance in increasing its participation rate; the scope of work to be performed as outlined in the budget guidelines; and last year's cost experience. Since participating physicians are eligible for free electronic media claims (EMC) lines for billing, allowance has been made for these expenses. Carriers with lower participation rates will receive greater funding for MAAC violation monitoring and monitoring of nonparticipating physicians for compliance with elective surgery disclosure requirements.

Carrier monitoring funds are allocated based on the national percentage of nonparticipating physicians. All carriers will receive the same funding amount for reporting participation statistics. Our computations of the carriers' budgets for these activities will include an allowance for price inflation. The ROs will negotiate with the carriers to resove

any differences between the HCFA allocations and the carriers' requests, within the limits of the funding available to HCFA.

9. Productivity Investments

The costs of implementing legislation and new initiatives designed to improve the effectiveness and efficiency of Medicare program administration are referred to as Productivity Investments. Several allocation methodologies will be employed in calculating the Productivity Investment budgets for individual intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all intermediaries and/or carriers where the costs are driven by bill/claims volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all intermediaries and/or carriers that require equal effort regardless of the contractor's size, we derived a standard allocation to be given to all contractors.

The ROs will negotiate with the intermediaries and carriers to resove any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

10. Professional Relations

In determining the individual carrier funding levels for the professional relations function for FY 1992, we considered the number of physicians and suppliers in the carrier's service area. Distribution of funds made available to HCFA for the performance of the professional relations function by carriers is made to each carrier based upon the ratio of physicians and suppliers in the carrier's service area to the national total of physicians and suppliers.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unites States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, fiscal intermediaries and carriers are not considered to be small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice such as this that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules. Rather, the purpose of this notice is to fulfill our obligation under sections 1816(c) and 1842(c) of the Act, as amended by section 4035(a) of OBRA '87, to publish annually in the **Federal Register** the proposed data, standards and methodology to be used in establishing fiscal intermediary and carrier budgets. This information is to be published for public comment at least 90 days prior to the publication of the final data, standards and methodology to be used.

This proposed notice would not promulgate any rule or implement any policy, nor would it be a part of, or substitute for, any negotiations we intend to conduct with the intermediaries and carriers. Thus, this document would not produce a change either in contractor operations or on program activities. In addition, this proposed notice would not affect provider or supplier reimbursement rates or fees.

For these reasons, this notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

For these same reasons, we also have determined, and the Secretary certifies, that this proposed notice would not result in a significant impact on a substantial number of small entities and would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

VI. Response to Comments

Because of the large volume of public comments that we usually receive on a proposed notice, we cannot acknowledge or respond to them individually. However, we will address all public comments received by the date specified in the **"DATES"** section of this preamble and will respond to the comments in our final notice.

(Sec. 1816 and 1842 of the Social Security Act (42 U.S.C. 1395h and 1395u))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program: No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: August 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-31292 Filed 12-31-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-92-5101-12-XJAA; U-64200]

Amended Record of Decision; Salt Lake District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amended record of decision.

SUMMARY: The Bureau of Land Management, Salt Lake District Office has amended the Record of Decision of the Final Environmental Impact Statement for the USPCI Clive Incineration Facility, dated September 5, 1990, to include language as directed by the Interior Board of Land Appeals decision of September 13, 1991 (120 IBLA 347).

Further information can be obtained by contacting the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

District Manager.

[FR Doc. 91-31269 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UTU-65717]

Proposed Reinstatement of Terminated Oil and Gas Lease; UT

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a

petition for reinstatement of oil and gas lease UTU-65717 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1991, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU-65717 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1991, subject to the original terms and conditions and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals, Adjudication Section.

[FR Doc. 91-31268 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-070-4333-13-241A]

Camping, Parking and Firearm Use Restriction Order for the North Hardscrabble Access Road

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Recreation use restriction.

SUMMARY: This order, issued under the authority of 43 CFR 8364.1, closes public lands along the North Hardscrabble Access Road to camping, parking and discharge of firearms. This order applies to public land administered by the Bureau within 300 ft. from the centerline of the North Hardscrabble Access Road, which includes portion of Eagle County Spring Creek Road, 102A, portion of the O.R.E.O. Subdivision road south of Road 102A, and portion of a BLM road. The affected land is located in Township 5 South, Range 85 West, Tract 80, also known as Lot 2 of the O.R.E.O. Subdivision, 6th Principal Meridian.

EFFECTIVE DATE: This closure shall be effective from the date of publication until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The areas affected by this order will be posted with appropriate regulatory signs. The closures and restrictions are aimed at preventing sanitation and littering problems, protecting the safety of persons and property on private land adjacent to the public lands, and preventing resource damage from vehicle use on unimproved surfaces.

PENALTIES: Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945-2341.

Rich Arcand,

Acting District Manager.

[FR Doc. 91-31176 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-JB-M

[NV-940-02-4212-22]

Filing of Plats of Survey; NV

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on December 5, 1991:

Mount Diablo Meridian, Nevada

T. 34 N., R. 31 E.—Dependent Resurvey
T. 34 N., R. 32 E.—Dependent Resurvey
T. 35 N., R. 32 E.—Dependent Resurvey
T. 34 N., R. 33 E.—Dependent Resurvey
T. 35 N., R. 33 E.—Dependent Resurvey
T. 35 N., R. 34 E.—Dependent Resurvey

2. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada on February 14, 1992:

T. 34½ N., R. 32 E.—Original Survey
T. 35 N., R. 32½ E.—Original Survey
T. 35½ N., R. 33 E.—Original Survey
T. 34 N., R. 33½ E.—Original Survey

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described in paragraph 2 are hereby open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to February 14, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. All the lands have been and continue to be open under the mining law.

5. These surveys were accepted September 30, 1991, and were executed to meet certain administrative needs of the Bureau of Land Management.

6. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert Steele,

Deputy State Director, Nevada.

[FR Doc. 91-31256 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-328]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Commission Determination Not to Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. 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) (Order No. 6) terminating the above-captioned investigation as to respondent Kaldewei GmbH & Co. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-205-3097.

SUPPLEMENTARY INFORMATION: On November 8, 1991, complainant American Standard, Inc. and respondent Franz Kaldewei GmbH & Co. ("Kaldewei") filed a joint motion to terminate the investigation as to

Kaldewei on the basis of a proposed consent order, consent order agreement, and settlement agreement. On December 4, 1991, the presiding ALJ issued an ID (Order No. 6) terminating the investigation as to Kaldewei on the basis of the consent order. No petitions for review or agency or public comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Copies of the nonconfidential version 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.

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-31297 Filed 12-31-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276 Formal Enforcement Proceeding]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has instituted a formal enforcement proceeding relating to the cease and desist order issued on March 16, 1989, at the conclusion of the above-capitioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(c).

On March 16, 1989, the Commission issued its final determination in the investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs) by, *inter alia*, respondent Atmel Corp. (Atmel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Atmel. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to the Commission's determination and orders.

On July 11, 1989, complainant Intel Corp. (Intel) filed a request for a formal enforcement proceeding against Atmel and Jack Peckham, Atmel's Vice President of Sales. On the basis of that request, the Commission instituted and conducted a formal enforcement proceeding.

On December 24, 1990, Intel filed a second request for a formal enforcement proceeding against Atmel. Intel's second request alleges violations occurring subsequent to the period at issue in the first enforcement proceeding.

The Commission having examined the request for a formal enforcement proceeding filed by Intel, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute a formal enforcement proceeding.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this formal enforcement proceeding 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 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-31295 Filed 12-31-91; 8:45 am]

BILLING CODE 7020-02-M

[Inv. Nos. TA-131-18, 503(a)-23, and 332-319]

Probable Economic Effect of Adding Certain Products to the List of Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On December 16, 1991, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131, 503, and 504 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. The request was made following publication; by the Trade Policy Staff Committee (TSPC), in the **Federal Register** on August 8, 1991 (56 FR 37758), of notice of the acceptance of product petitions from the Governments of Czechoslovakia, Hungary, Poland, and Yugoslavia to add products to the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP). According to USTR, modifications to the GSP which may result from this review will be announced on or about April 1, 1992, and become effective on or about May 1, 1992.

Following receipt of that request, the Commission instituted investigation Nos. TA-131-18, 503(a)-23, and 322-319 in order to provide advice, as requested by USTR—

(1) Pursuant to sections 131(b) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the Generalized System of Preferences (GSP); and

(2) Pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), in accordance with section 504(d) of the Trade Act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in the attached Annex were being produced in the United States on January 3, 1985.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would

be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974.

As requested by USTR, the Commission will seek to provide its advice not later than March 9, 1992.

EFFECTIVE DATE: December 23, 1991

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. J Fred Warren (202-205-3311)
(2) Textiles and apparel, Ms. Linda Shelton (202-205-3457)
(3) Chemical products, Mr. Edward Matusik (202-205-3356)
(4) Minerals and metals, Ms. Deborah McNay (202-205-3425)
(5) Machinery and equipment, Mr. John Cutchin (202-205-3396)
(6) General manufactures, Mr. Dennis Luther (202-205-3497)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-205-3091.

PUBLIC HEARING: A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on January 14-15, 1992. All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, no later than noon, January 6, 1992. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is January 8, 1992; and the deadline for filing posthearing briefs or statements is January 24, 1992. In the event that no requests to appear at the hearing are received by noon on January 6, 1992, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202-205-1808) after January 8, 1992 to determine whether the hearing will be held. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201 6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements and posthearing briefs should be submitted to the Commission at the earliest practical date and should be received no later than January 24, 1992. All submissions should be addressed to the Secretary to the Commission at the Commission's Office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Attachment.

Issued: December 26, 1991.

Annex I (HTS Subheadings) [1]

Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

0210.12.00	2921.59.20	2939.40.50(pt)
0406.90.3040	2922.30.20(pt)	2941.40.00
0712.90.75	2922.30.30(pt)	3204.12.50(pt)
1210.10.00	2922.49.20(pt)	3204.15.50(pt)
1602.49.40	2922.50.15(pt)	3204.20 10
1602.50.20	2924.21.30(pt)	3204.20.50
2003.10.00	2925.20.30(pt)	3812.10.10
2009.60.0060	2926.90.10(pt)	3812.30.40
2204.10.00	2926.90.35(pt)	3822.00.50
2204.21.40	2926.90.40(pt)	3912.20.00
2204.21.40(pt)	2930.90.20(pt)	5404 10.20
2204.21.80	2932.29.40(pt)	6911.10 10
2204.21.80(pt)	2933.39.35(pt)	6012.00.35
2208.20.50	2933.40.25(pt)	6912.00.39
2902.90.50(pt)	2933.40.50(pt)	6912.00.45
2904.10.20(pt)	2933.51.50(pt)	6912.00.48
2904.10.30(pt)	2933.59.26(pt)	7013.21.20
2904.90.35	2933.90.27(pt)	7013.21 30
2907.15.50(pt)	2933.90.32(pt)	7013.31 30
2907.23.00	2934.30.10(pt)	7318.15.80
2908.20.10(pt)	2934.30.20(pt)	8112.91 10
2908.20.50(pt)	2934.90.45(pt)	8482 10.50
2908.90.20(pt)	2935.00.35(pt)	8482.30.00
2914.49.10(pt)	2935.00.46(pt)	8482.40.00
2914.61.00	2936.26.00	8482.50.00
2915.90.15(pt)	2937.92.30(pt)	8482.80.00
2916.39.60(pt)	2937.99.10(pt)	9105 19 10
2917 19.10	2937.99.50(pt)	9105 19.40
2918.21.50	2939 10.20(pt)	9404.30.80
2918.29.50(pt)	2939.40.10	9609 10.00
2921 42 70(pt)	2939.40.50	

[1] See USTR **Federal Register** notice of December 18, 1991 (56 FR 65750) for article descriptions

[FR Doc. 91-31294 Filed 12-31-91 8:45 am]

BILLING CODE 7020-02-M

Investigation No. 731-TA-539 (Preliminary); Uranium From the U.S.S.R.

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the U.S.S.R.[3] of uranium,[4] provided for in subheadings 2612.10.00, 2844 10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 8, 1991, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of uranium from the U.S.S.R. Accordingly, effective November 8, 1991 the Commission instituted antidumping investigation No. 731-TA-539 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 19, 1991

[1] The record is defined in section 207.2(f) of the Commission s Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford, Nuzum, and Watson not participating.

[3] Purposes of this investigation, the U S.S.R includes each and every Republic that was a member of the U.S.S.R. on November 8, 1991

[4] The product covered by this investigation is uranium from the U S.S.R. This includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}.

(56 FR 58397). The conference was held in Washington, DC, on December 3, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 23, 1991. The views of the Commission are contained in USITC Publication 2471 (December 1991), entitled "Uranium from the U.S.S.R.: Determination of the Commission in Investigation No. 731-TA-539 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-31296 Filed 12-31-91, 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and Department of Justice regulations, 28 CFR 50.7, notice is hereby given that on November 18, 1991, a proposed Consent Decree ("Decree") in *United States* v. *Acolor Company, et al.*, No. 1:91-CV-972. was lodged with the United States District Court for the Western District of Michigan.

The United States filed this action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), at the request of the United States Environmental Protection Agency ("U.S. EPA"). The complaint seeks to recover past response costs incurred by the United States responding to the release or threatened release of hazardous substances, at the Auto-Ion Chemicals Co., Inc. Site, located in Kalamazoo, Michigan.

Under the proposed Decree, twenty (20) Settling Defendants have agreed to pay the Hazardous Substance Superfund ("Superfund") $225,000, plus interest from October 15, 1991 until the date of payment. In addition, the United States, on behalf of the United States Department of the Navy, will transfer $35,000 to the Superfund.

The Department of Justice will receive comments relating to the proposed Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Acolor Company, et al.*, DJ Ref. #90-11-2-479A.

The proposed Decree may be examined at the following offices: (1) The United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503; (2) the United States Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604; (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202-347-2072). A copy of the proposed Decree may be obtained in person or by mail from the Document Center.

Any request for a copy of the Decree, not including Exhibits, should be accompanied by a check in the amount of $3.00 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 91-31255 Filed 12-31-91 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The Carter Mining Company

[Docket No. M-91-117-C]

The Carter Mining Company, P.O. Box 3007, Gillette, Wyoming 82716-0607 has filed a petition to modify the application of 30 CFR 77.516 (electric wiring and equipment; installation and maintenance) to its Rawhide Mine (I.D. No. 48-00993) and its Caballo Mine (I.D. No. 48-01034) both located in Campbell County, Wyoming. The petitioner requests relief from the requirements of the National Electric Code for wiring of electric and diesel-powered surface excavation equipment.

2. D L & B Coal Company

[Docket No. M-91-118-C]

D L & B Coal Company, 306 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Diamond Slope (I.D. No. 36-08203) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons.

3. A.K.A. Coal Company

[Docket No. M-91-119-C]

A.K.A. Coal Company, Box 148, R.D. 1, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Diamond Slope (I.D. No. 36-07760) located in Schuylkill County, Pennsylvania. The petitioner requests a modification to require the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any pair or set of developing entries be 5,000 cfm, and reaching the intake end of a pillar line be 5,000 cfm.

4. Brookside Coal Company

[Docket No. M-91-120-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Four Foot Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons.

5. Twentymile Coal Company

[Docket No. M-91-121-C]

Twentymile Coal Company, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use a low-level carbon monoxide detection system to monitor electrical equipment instead of ventilating the equipment into the return.

6. Twentymile Coal Company

[Docket No. M-91-122-C]

Twentymile Coal Company, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.326 (aircourse and belt haulage entries) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use the air in the belt entry to ventilate active working places and planned longwall retreat panels, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

7. Twentymile Coal Company

[Docket No. M-91-123-C]

Twentymile Coal Company, 9100 Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device system; installation; minimum requirements) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use the air in the belt entry to ventilate active working places and planned panels, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

8. Island Creek Coal Company

[Docket No. M-91-124-C]

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment, or slurry impoundment structures; general) to its Fies No. 14 Mine (I.D. No. 15-16546) located in Hopkins County, Kentucky. The petitioner requests a modification to allow an experimental practice of converting an abandoned slurry impoundment into a wetlands area.

9. Peak Mountain Coal Company

[Docket No. M-91-125-C]

Peak Mountain Coal Company, 244 Daniel Boone Drive, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-17072) located in Whitley County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen indicator instead of a machine mounted methane monitor on permissible three wheel tractors with drag bottom buckets.

10. Consolidated Coal Company

[Docket No. M-91-126-C]

Consolidated Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Robinson Run 95 Mine (I.D. No. 46-01318) located in Harrison County, West Virginia. The petitioner proposes to enclose electric equipment in a monitored fireproof structure instead of ventilating the equipment to the return.

11. Pyro Mining Company

[Docket No. M-91-127-C]

Pyro Mining Company, P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device system; installation; minimum requirements) to its Baker Mine (I.D. No. 15-14492); and its Pyro No. 9 Wheatcroft Mine (I.D. No. 15-13920) both located in Webster County, Kentucky. The petitioner requests to amend its petition to consolidate and include the provisions of the Pyro No. 11 Mine, (I.D. No. 15-10339), docket number M-86-38-C; and Pyro No. 9 Slope, William Station Mine, (I.D. No. 15-13881), docket number M-89-134-C into the Pyro No. 9 Wheatcroft Mine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1992.

Copies of these petition are available for inspection at that address.

Dated: December 23, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-31291 Filed 12-31-91; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-374]

Commonwealth Edison Co.; LaSalle County Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix J to 10 CFR part 50 issued to Commonwealth Edison Company (the licensee), for the LaSalle County Nuclear Power Station, Unit 2, located in Brookefield Township, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of section III.A.6(b) of appendix J to 10 CFR part 50, which requires the licensee to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The increased test frequency is required as a result of test failures in 1987 and 1990. The requested exemption would allow the licensee to resume its normal retest schedule in accordance with section III.D. of appendix J to 10 CFR part 50.

The proposed action is in accordance with the licensee's request for exemption dated October 11, 1991.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type A test during the upcoming refueling outage and would enable the LaSalle County Station, Unit 2, to resume the normal retest schedule specified in section III.D. of 10 CFR part 50, appendix J. The proposed exemption is needed to avoid unnecessary pressurization of the containment to perform a Type A test, as other measures proposed or implemented by the licensee will more effectively focus corrective actions on the previously identified sources of significant containment leakage. For the last two Type A tests conducted by the licensee, leakage from the Traversing Incore Probe Air Purge Supply, the Residual Heat Removal Shutdown Cooling Return, the Hydrogen Recombiner Suppression Pool Discharge, and the Reactor Water Cleanup Section Valves has been the major contributor to the total measured containment leakage rate. The licensee has developed extensive corrective action plans to improve the performance of these valves and other valves which have been identified as being of concern to the licensee and the staff. Therefore, the license has requested a one-time exemption from the schedular requirements of section III.A.6.(b) of appendix J to 10 CFR part 50.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. Although the last two Type A tests were failures due to excessive leakage from specific valves, the tests have demonstrated that there has been no significant degradation of containment integrity over the last three operating cycles. The licensee has implemented extensive corrective action plans to reduce the leakage from the identified valves.

Therefore, the Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected containment leakage and that containment integrity would be maintained. Consequently, the probability of accidents would not be

increased, the post-accident radiological releases would not be greater than previously determined, nor would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are not significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increased radiation exposures without any compensating benefits.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the LaSalle County Nuclear Station," dated November 1978.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated October 11, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 20th day of December 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31284 Filed 12-31-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPRR-123 issued to the University of Texas (UT or the applicant) for the TRIGA Mark II Research Reactor. The facility is located on the applicant's site at the University of Texas Balcones Research Center in Austin, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPRR-123 to March 31, 1992. The proposed action is in response to the applicant's request dated September 24, 1991. The applicant requested an extension until December 31, 1991. The NRC staff is extending the latest construction completion date to March 31, 1992, to allow for completion of the license issuance review.

The Need for the Proposed Action

The proposed action is needed to allow time for the NRC staff to complete review of the documentation required to support issuance of the Facility Operating License.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985, of the UT construction permit application.

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

Since we have concluded that there is no significant environmental impact associated with this construction permit extension, any alternatives will either have no significant impact or greater impact than the proposed action.

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of research, education, and training. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore small areas to their original state. This would be a slight environmental benefit, but much outweighed by the educational and economic losses from denial use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985, of the UT construction permit application.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated September 24, 1991, which is available for public inspection at the Commission's Public Document Room,

the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of December 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31283 Filed 12-31-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 9-11, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on November 25, 1991.

Thursday, January 9, 1992

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-10:45 a.m.: Integral Systems Testing for the Westinghouse AP-600 Nuclear Plant (Open/Closed)—The Committee will review and report on integral systems testing requirements to support design certification of the Westinghouse AP-600 nuclear plant in accordance with 10 CFR part 52. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

11 a.m.-12 Noon: Meeting with Director, NRC Office of Nuclear Reactor Regulation (Open)—The Committee will meet with Dr. Thomas E. Murley, Director, NRR, to discuss items of mutual interest, including the ACRS-NRR staff working interface.

1 p.m.-3 p.m.: Design Acceptance Criteria for Certification of Nuclear Power Plants (Open/Closed)—The Committee will review and comment on proposed use of design acceptance criteria for certification of standardized nuclear power plant designs. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:15 p.m.-4:15 p.m.: NRC Metrication Policy (Open)—The Committee will review and comment on proposed NRC metrication policy (SECY-91-390 dated December 3, 1991) with respect to nuclear facility licensing and regulation. Representatives of the NRC staff will participate as appropriate.

4:15 p.m.-5:15 p.m.: Reconciliation of ACRS Comments/Recommendations (Open)—The Committee will discuss the replies received from the NRC Executive Director for Operations regarding reconciliation of ACRS comments and recommendations.

5:15 p.m.-6 p.m.: NRC Safety Research Program (Open)—The Committee will discuss the proposed ACRS annual report to the U.S. Congress on the NRC safety research program.

6 p.m.-6:45 p.m.: Anticipated ACRS Activities (Open)—The Committee will hear and discuss the report of the ACRS Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee, and anticipated activities of ACRS subcommittees, including control of nuclear power plant switchyard activities.

Friday, January 10, 1992

8:30 a.m.-11 a.m.: Proposed Commission Actions Related to Siting of Nuclear Power Plants (Open)—The Committee will review and report on draft SECY papers regarding (1) Proposed revision of 10 CFR part 100, Decoupling Siting from Design; (2) Proposed revision of TID-14844, Calculation of Distance Factors for Power and Test Reactor Sites (Updating the source term); (3) Proposed Site Characteristics to be used in 10 CFR part 100 Revision and the Definition of a Large Release; and (4) Proposed Definition of a Large Release in Accordance with the NRC Safety Goal Policy.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11 a.m.-12:30 p.m.: Advanced Reactor Safety Features (Open)—The Committee will hear a briefing by and hold a discussion with an invited expert (Mr. Charles Forsberg, ORNL) regarding advanced reactor safety features and their impact on public acceptance of nuclear power as an energy option.

1:30 p.m.-3 p.m.: Design Acceptance Criteria for Certification of Nuclear Power Plants (Open/Closed)—Continue discussion regarding proposed use of design acceptance criteria for standardized nuclear power plant designs.

3:15 p.m.-4:45 p.m.: NRC Policy on Integrated Schedules (Open)—The Committee will hold a discussion with representatives of the NRC staff regarding the proposed NRC final policy statement on integrated schedules. Representatives of the nuclear industry will participate, as appropriate.

4:45 p.m.-6 p.m.: Preparation of ACRS Reports (Open)—The Committee will hold a round-table discussion of comments and recommendations to be included in ACRS reports to the NRC regarding items considered during this meeting.

6 p.m.-6:30 p.m.: Key Technical Issues Applicable to Future Nuclear Power Plants (Open)—The Committee will discuss proposed Action Plans for ACRS review and evaluation of key technical issues applicable to future nuclear power plants.

Saturday, January 11, 1992

8:30 a.m.-12 Noon: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting and items which were not completed at previous meetings, as time and availability of information permit.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1 p.m.-1:45 p.m.: Conduct of ACRS Activities (Open)—The Committee will discuss items related to the conduct of ACRS activities, including a proposed press release calling for nomination of candidates for membership and a proposed amendment to the Federal Advisory Committee Act.

1:45 p.m.-2 p.m.: Appointment of New Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for Committee membership.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.-2:30 p.m.: Miscellaneous (Open)—The Committee will complete the discussion of items considered during this meeting and proposed Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the

Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552b(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

Dated: December 26, 1991.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 91-31286 Filed 12-31-91; 8:45 am]

BILLING CODE 7590-01-M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG-1435, Supplement 1, Status of Safety Issues at Licensed Power Plants. This document has been prepared to provide a comprehensive description of the implementation and verification status of all TMI Action Plan Requirements, Unresolved Safety Issues and Generic Safety Issues at licensed operating plants and to make this information available to other interested parties, including the public. Data contained in the document are presented as of September 30, 1991.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge their order by calling 202/275-7082. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 11th day of December 1991.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31285 Filed 12-31-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Meeting of Federal Salary Council

AGENCY: United States Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: The Federal Salary Council will meet to discuss the organization and administration of the Council and to review issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

DATES: January 16, 1992, and January 30, 1992, beginning at 2 p.m.

ADDRESSES: Room 1350, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth O'Donnell, Chief of Salary Systems Division, room 6H31, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415-001. Telephone number: (202) 606-2838.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of 5 U.S.C. 5304, the President established the Federal Salary Council by Executive Order 12764 to advise the President's Pay Agent on: (1) The establishment or modification of pay localities; (2) the coverage of the surveys conducted by the Bureau of Labor Statistics (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed); (3) the process of comparing the rates of pay under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and (4) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities. This Council shall consist of nine members. The statute provides that three of the members be persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy; and that six of the members be representatives of employee organizations which represent substantial numbers of General Schedule employees. To date, the President has appointed eight of the nine members of the Federal Salary Council. The President's Pay Agent is providing for meetings of the Council. This notification announces the first two meetings. The agenda includes introduction, organization and administration of the Council, overview of FEPCA requirements, timetables for fulfilling statutory requirements, and opening discussions on recommendations for criteria to establish the geographic boundaries of pay localities.

For the President's Pay Agent.

Constance Berry Newman,

Director.

[FR Doc. 91-31320 Filed 12-31-91; 8:45 am]

BILLING CODE 6325-01-M

UNITED STATES INFORMATION AGENCY

Albanian Educational and Cultural Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private nonprofit organizations in support of seven projects that have been initiated by E/P. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquires to the Office or submitting their proposals.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Friday, February 28, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked February 28, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Office of the Executive Director (E/X), Attn: Citizen Exchanges—Albanian Exchange Program, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547. To facilitate the processing of your request, please include the name of the appropriate USIA Program Officer, as identified on each announcement, on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to nonprofit institutions, increased private sector commitment to and involvement in international exchanges. (All international participants will be nominated by USIS personnel overseas and selected by USIA). Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Awarding of any and all grants is contingent upon the availability of funds.

Summary of Albania Exchange Program Ideas

Background

Albania is one of Europe's smallest countries, with 10,629 square miles and a population of 3.2 million (two-thirds of whom live in rural areas). Since early 1990, Albania has witnessed significant democratic reforms and has taken steps to rejoin the international community after decades of self-imposed isolation. A coalition government dominated by noncommunists is in power, and efforts have been made to institute a market-oriented economy.

However, political instability, the severity of Albania's economic crisis, and turmoil in Yugoslavia which is the home for another 2.5 million ethnic Albanians, threaten Albania's transition from Communism. The quality of life in Albania, the lowest in Europe, has deteriorated further with large numbers of unprofitable enterprises on the verge of bankruptcy. Given Albania's struggle to become a more democratic and market-oriented nation and its need for information, training and infrastructure development, the United States Information Agency is developing a series of multi-faceted exchange programs to take place in Albania and the United States during the summer and fall of 1992.

I. Economic Reform

The Office of Citizen Exchanges proposes the development of a three-phase program of assessments, intensive workshops on macro-economic and mirco-economic theories and practice for Albanian professionals, and a study tour in the United States. Preliminary to the first set of workshops in Albania, the grantee institution will conduct a one week assessment tour in Albania for one or two of the program's key logistical administrators and scholars. This initial assessment will provide valuable information concerning the program's administrative and logistical requirements, and will provide the grantee institution with invaluable information so that it can tailor the subsequent workshops to meet the realities of Albania's economic transition.

Within a period of approximately two months, the grantee institution will develop and conduct an intensive two-week workshop in Tirana, or other suitable location, primarily on basic marco-economic terms, theories and practices for twenty to thirty Albanian professionals including senior Ministry officials, business and/or academic leaders. This workshop will also explore the role of public administration in establishing a supportive and fair environment for market-based economic development and trade. The program's key administrator should plan to remain in Tirana, sited at the University, for an additional month where he would lecture and continue to serve as an advisor to both the government and the University. This specialist could help organize marketing at the local level, help advise on privatizing trade, and help in providing substance to key economic laws concerning trade. The development of new curricula and instructional materials should be encouraged.

The third phase or follow-on program, a three week study tour in the U.S., will include six to eight carefully selected senior-level Ministry officials and education leaders from Albania, selected by Agency representatives in Albania. The program will focus on marco-economics and overall problems related to foreign trade, finance and the pursuit of comparative economic advantage. This program will also provide information concerning international economic organizations, private and public international assistance programs and their priorities. The development of these workshops will be the sole responsibility of the award winner. The approximate budget for this two-way exchange program is $75,000–$115,000.

II. Business Administration/Management Training

The Office of Citizen Exchanges proposes the development of intensive courses and workshops in Albania and a follow-on program of internships in the U.S. The courses would introduce such topics as Western accounting practices, financial management and banking, research and marketing management, entrepreneurship and small business development, industrial relations, privatization, advertising, computers and telecommunications.

Program participants will include professors and instructors of business, senior business leaders, government officials or promising practitioners.

The first phase of this exchange program will include a one week assessment tour in Albania for the program's key administrators and scholars. This initial assessment will provide valuable information concerning the program's administrative and logistical requirements, and will provide the grantee institution with invaluable information so that it can tailor the subsequent workshops to meet the realities of Albania's economic transition.

Within a period of approximately two months, the grantee institution will develop and conduct a series of intensive workshops of varying duration (up to two-weeks) in Tirana, or other suitable location, on Macro-economics to include detailed discussions of basic business practices and concepts.

The final phase or follow-on consists of internships in the United States of two or three months duration for six to eight senior Albanian business leaders, who may have demonstrated particular competence as participants during the workshops in Albania. These internships with American small-business enterprises (and possibly applicable Federal or State Agencies) will provide first-hand observation of theories and concepts at work in the U.S. This multi-faceted program is budgeted with a USIA support of approximately $75,000 to $115,000.

III. Educational Reform

The Office of Citizen Exchanges proposes the development of a two-part exchange program which includes a three-week U.S. seminar/study tour for approximately six to eight secondary

school educators, University educators, and senior level education officials from Albania selected by USIS; and a series of intensive workshops and consultations in Albania. The project would expose these participants to the essential components of social science education in the U.S.; examine citizen participation in the democratic process at the federal, state and local levels; and examine the role of educators, school districts, professional associations, volunteer groups, textbook publishers and local communities in shaping social science curricula. This program would also have the collateral benefit of exposing Albanian educators and officials to the administration of American primary and secondary education systems.

The overall goal of this program is to open a dialogue which could produce a framework for developing social science education curricula in Albania.

The second phase of this program will include two-week workshops for other educators held in Albania with U.S. educators and community leaders working with recent alumni of the social science education study tour program in the United States. American consultants/instructors could also assist Albanian education officials and curriculum designers in an evaluation of their social science education program. These workshops will reach a wider audience of Albanian leaders who can learn of insights garnered from the U.S. study tour program. The program should also encourage long-term institutional linkages to promote professional development of educators, establishment of standards, exchange of instructional materials and syllabi, as well as other resources vital to the creation of an effective social science program. This multi-faceted program is budgeted with USIA support of approximately $75,000 to $115,000.

IV. Library Development

The Office of Citizen Exchanges proposes the development of a three-part Library Development and Management Program for Albanian librarians and library educators, selected by USIS. An initial exploratory trip of one week to Albania for two key U.S. academic scholars to refine this entire program is encouraged. An American university or professional association in library science and/or information services will then conduct a three-week workshop and study tour in the United States for six to eight Albanian library professionals. In Albania, there is no tradition of public lending-library development, nor of broad access to educational materials for students and the general public. It is critical in the development of its program in the United States, that the grantee institution demonstrates a keen awareness of Albanian needs and the status of information access and library/educational systems there.

The purpose of this U.S. study tour and intensive workshop program is to give Albanian educators a first-hand opportunity to examine the American library management system and its processes, including: collection, classification, management and delivery, information retrieval, indexing, material preservation and information technology. The program should include: Lectures and demonstrations by library science faculty and information system specialists, hands-on experience, site visits to local universities, public and corporate libraries, the Library of Congress and meetings with the USIA Books Program Division. Among the topics which might be addressed are: assessing needs; interpersonal skills for the library professional; networking; and the training of other librarians and interns. The grantee institution should be aware of the importance of not exposing the Albanian participants to information technologies that while useful are clearly beyond their fiscal reach.

The final phase of this program will include a team of U.S. experts visiting Albania for two or three weeks to assist in the implementation of a basic library management system and to provide other information for regional libraries and educational institutions. This workshop/training might become a prototype for further educational programs and the exchange of information, donation of books and other materials in support of library development throughout the country. This entire multi-faceted program is budgeted with USIA support of approximately $75,000 to $115,000.

Additional Program Development Recommendations

Competing grantee applicants should not provide proposals which are overly ambitious or superficial. Rather, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Applicants must include a detailed description of why their project is important, what their objectives or goals are, and how they will achieve those objectives through a carefully developed plan.

Applicants are encouraged to provide confirmation that Albanian cosponsors endorse their exchange program.

Proposals should explain how the U.S. and Albanian cosponsors will generate other leader and public support (fiscal, social and political) for their program. If possible, applicants should delineate resources that may be available to them in Albania and describe those resources the U.S. grantee institution will provide for this purpose. A central objective of this solicitation is the creation of enduring institutional linkages.

Institutions applying for assistance should not simply present a plan to replicate American institutions, but clearly demonstrate an understanding of Albanian needs, and how the U.S. experience is potentially relevant—if reconfigured—to meet those needs.

Applicants may also wish to use any of the following approaches to achieve their program objectives:

—The development of consortia, associations and information networks in the United States and in Albania which are likely to endure;
—Attention not only on reaching leaders and potential leaders, but also in providing appropriate training materials.
—The development and dissemination (overseas only) of books, newsletters, on-line data systems, and other appropriate communication technology (including desk-top publishing).

Other Logistical Considerations

Applicants should demonstrate their capability of handling the program independently, as USIS Post may be unable to provide logistcal support. Program monitoring and oversight will be provided by appropriate Agency elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a non-profit grantee institution which receives funds from corporate or other cosponsors will then use those monies to provide food, lodging and pocket money for the participant. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution. The grantee institution should provide the names of American

participants to the Office of Citizen exchanges for information purposes.

The Government reserves the right to reject any or all applications received. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Funding and Budget Requirements for all Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.	.....	.....	
Total	$.....	$.....	$

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116–0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct and indirect costs). USIA-funded administrative costs are limited to 22 (twenty-two) per cent of the total funds requested. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. (Awarding of any and all grants is contingent upon the availability of funds.)

Application Requirements

Application materials may be obtained by writing to: The Office of Citizen Exchanges (E/P), United States Information Agency, Attn: Albania Exchange Program, room 216, 301 4th Street, SW., Washington, DC 20547.

Attention: Program Officer—Sylvia Bosak (202–619–5319).

Inquiries concerning technical requirements are welcome.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish; how it is consistent with the purposes of the USIA award program; and how it relates to USIA's mission.
2. A concise description of the project, including complete program schedules and proposed itineraries. Applicants may wish to submit a list of suggested participants for review by appropriate Agency officials.
3. A statement of what follow-up activities are proposed; how the project will be evaluated; what groups, beyond the direct participants, will benefit from the project and how they will benefit.
4. A detailed three-column budget.
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.
6. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).
7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).
8. For proposals requesting $100,000 or more, Certification for Contracts, Grants and Cooperative Agreements, Form M/KG–13.
9. For proposals requesting $100,000 or more, Disclosure of Lobbying Activities (OMB #0348–0046).

Note: All required forms will be provided with the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.
2. *Institution Reputation/Ability/Evaluations:* Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.
3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.
4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.
5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.
6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.
7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will met the program's objectives.
8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.
9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.
10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.
11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.
12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 27, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31300 Filed 12-31-91; 8:45 am]

BILLING CODE 8230-01-M

Summer Institute for English Language Educators From South Africa and Namibia

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency requests proposals for a Summer Institute for English Language Educators from South Africa and Namibia. The general objective of the Summer Institute is to support and encourage the upgrading of secondary education for blacks in the field of English. There will be a particular emphasis on preparing disadvantaged students for university level work in English both in the secondary school and in bridging and academic support programs administered by tertiary level institutions.

Participants will be individuals involved with English teaching in black education and will be drawn from universities, teacher training institutions, secondary schools and the non-formal sector. USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-Second Language (ESL), experience in providing academic support programs to disadvantaged students, special expertise in handling cross-cultural programs, and experience with South African and Namibian educators. Subject to availability of funds, one grant will be awarded to conduct a Summer Institute in 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. e.s.t. by February 14, 1992. Faxed documents will not be accepted, nor will documents postmarked on February 14, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations in beginning and ending dates to coincide with local academic calendars. The institution should explain why the date variation is proposed and demonstrate improvements in program quality and cost effectiveness that may be achieved thereby. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Summer Institute for English Language Educators from South Africa and Namibia, Office of the Executive Director, E/X, Room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested institutions should contact Dr. Ellen S. Berelson at the U.S. Information Agency, Academic Exchange Programs Division, E/AEA, room 232, 301 4th St. SW., Washington, DC 20547, telephone (202) 619-5355, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

The Bureau of Educational and Cultural Affairs of the United States Information Agency requests proposals for a Summer Institute for English Language educators from South Africa and Namibia. The general objective of the Summer Institute is to support and encourage the upgrading of secondary education for blacks in the field of English.

There will be a particular emphasis on training educators to prepare disadvantaged students for university level work in English while still in secondary school and in bridging and academic support programs (ASP) administered by tertiary level institutions. In South Africa a bridging program is a first year university program that helps students make up for the deficiencies in their secondary school education so that they can perform at a satisfactory level at the university.

Academic support programs often continue throughout a student's university career providing help to those who continue to have academic problems. A majority if not all of the students in the bridging and academic support programs in South Africa are ESL students because their first language is not English.

Depending upon availability of funds, approximately 25 teachers from South Africa and Namibia will participate in the Institute. Participants will be individuals involved with English teaching in black education and will be drawn from universities, teacher training institutions, secondary schools and the non-formal sector.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-Second Language (ESL) and in providing academic support programs (ASP) for disadvantaged students, special expertise in handling cross-cultural programs, and experience with South African and Namibian educators. Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international educational exchange.

Authority for this exchange is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Time Frame: The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations of no more than 10 days in beginning and ending dates to coincide with local academic calendars. Please explain why a variation in dates is proposed and show improvements in program quality and cost effectiveness that may be achieved thereby.

Proposed Budget: A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are avaialble in the application packet.

Eligibility of African Participants: Participants will be selected by the U.S. Information Agency. Minimum

qualification for all participants will be a two-year teacher training diploma beyond secondary school or its equivalent. Many participants will hold the equivalent of BA/BS degrees from their national education systems.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. Society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

Program Description: The applicant is asked to design a two part program:

(a) A five-week academic program at the university with emphasis on methodology and teaching techniques in ESL which will meet the special needs of secondary and tertiary level ESL teachers, and teacher trainers from South Africa and Namibia. Two concurrent academic components within the same Institute should be designed: One for teachers involved in preparing students for university level work in English; and one for teacher trainers with responsibilities in supervision and staff training. The program should include a variety of formats such as discussion sessions, lectures, workshops, and practicums. Lengthy lectures should be kept at a minimum.

(b) A one-week escorted cultural and educational tour of Washington, DC at the end of the academic program, planned, arranged, and conducted by the Program Director and principal university staff. The tour should be seen as an integral part of the program, complementing and reinforcing the academic material. Programming in Washington, should include a half-day briefing session at the U.S. Information Agency. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost effective. The participants will return to their home countries at the conclusion of the Washington tour.

The academic program should provide time for interaction with American students, faculty, and the local community to improve the participants understanding of the United States. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (with other educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Program Objectives: Specific areas to address in the Institute follow. The U.S. institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' concerns. The program design should exhibit evidence of adaptability to the different needs of the two groups; that is, to teachers and to teacher trainers.

1. ESL teaching methodology in theory and practice. How to improve listening, speaking, writing and reading skills in advanced secondary and tertiary level students of English.

2. Improvement of pedagogical skills and of skills required for the development of appropriate curriculum and teacher-made materials.

3. Development of curriculum materials during the Institute which can be used in the participants' home country.

4. For teacher trainers: Enhancement of teacher training skills; evaluation and observation of classroom teachers; development of in-service training programs for teachers; designing and conducting workshops to train ESL teachers.

5. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small group needs in classes with fifty or more students.

6. Introduction to computer based word processing with emphasis on hands-on experience, if needed.

7. Visits to on-going ESL classes and academic support programs at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe and practice ESL teaching skills.

8. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

9. On-going evaluation and adjustment of program components accordingly, as well as evaluation of the entire Institute.

Program Administration:

All Institute programming and administrative logistics, management of the academic program and the cultural tour, local travel, and on-site university arrangements, including enrolling participants as members of Teachers of English to Speakers of other Languages (TESOL) will be the responsibility of the Institute grantee. USIA will be responsible for all communications to and from the U.S. Information Service posts in South Africa and Namibia, which submit nominations to the Academic Exchange Programs Division and are responsible for all international travel. USIA will provide the university with participants' curriculum vitae and itineraries and be available to offer any advice or guidance the university may find useful.

The African participants will arrive directly at the campus site from their home countries. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Departures will be from Washington, DC. The program staff will have to plan for transportation to Washington area airports.

The host institution is responsible for arrangements for lodging, food and maintenance for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites which offer privacy while at the university based Institute are preferable.

Application Requirements (Refer to Application Packet):

Proposals must be submitted within deadline and provide a detailed plan in response to the objectives and needs outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational competence to manage interactions between African educators and Americans.

The proposal package must include one original and fifteen copies. Each proposal must be presented as follows:

1. A completed and signed cover sheet for grant applications which will be provided in the application packet.

2. An abstract of the proposed Summer Institute not to exceed two double-spaced pages.

3. A narrative not to exceed twenty double-spaced pages. The detailed narrative should outline the structure and organization of Institute courses and must include a day-by-day agenda for classes and supplementary activities. Plans for lodging and meals should be discussed in this section. Also note plans to identify appropriate books and readings to be distributed to participants on arrival or to be sent to them upon their return home as follow-up to Institute themes. A plan for institutional

evaluation of the project should also be included.

4. A budget in the prescribed format outlining specific expenditures. Refer to the application packet for format.

5. Appendices must contain the following information:

a. Academic/professional resumes of program director(s), instructors, consultants, and program staff (not to exceed two double-spaced pages for each).

b. Evidence of the institution's activities in substantive academic ESL programs and academic support programs.

c. Demonstration of the institution's experience with similar international educational exchange projects.

6. Completed forms in support of the proposal. See application packet for the following forms: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet; Assurance of Compliance; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Disclosure of Lobbying Activities; and Designation of Congressional District.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, the budget and contracts offices and, as necessary, by the Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality, rigor, and appropriateness of proposed syllabus to the program objectives of the Institute.

2. Institutional capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program.

3. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior guarantees and the demonstrated potential of new applicants.

4. Evidence of the ability to be somewhat flexible in final program design in response to initial needs assessment of the specific program participants.

5. Evaluation plan. Proposals should provide a plan for evaluation by the grantee institution at the conclusion of the Summer Institute.

6. Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

7 Quality and depth of the cross-cultural program experience of the staff assigned to the Institute as well as their academic credentials.

8. Effective use of community and regional resources.

9. A well-thought-out and comprehensive cultural tour to complement the academic program.

10. Cost-effectiveness. Administrative components of the grant should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are biding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified on the results of the review process on or about May 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 20, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31271 Filed 12-31-91; 8:45 am]

BILLING CODE 8230-01-M

Cultural Property Advisory Committee; Meetings

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, January 14, 1992 from 9 a.m. to approximately 3 p.m., at USIA headquarters, 301 4th Street, SW Conference Room 840, Washington, DC. The meeting's agenda will consist of the Committee s deliberation as to whether the United States should extend the import ban on pre-Hispanic archaeological material originating in El Salvador's Cara Sucia region. The emergency import ban imposed under the Convention on Cultural Property Implementation Act (Pub. L. 97-446) on September 11, 1987 expires on March 13, 1992.

The meeting of the Cultural Property Advisory Committee will be open to the public. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619-6612 by 5 p.m. on Friday, January 10, 1992. A list of public attendees will be posted at the security desk of USIA headquarters in order to facilitate access to the meeting room.

Dated: December 26, 1991.

Eugene P Kopp,

Deputy Director, U.S. Information Agency.

[FR Doc. 91-31301 Filed 12-31-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 1
Thursday, January 2, 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).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 4–92; Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time, Subject Matter

Wed., January 22, 1992, at 10:30 a.m.
Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC on December 30, 1991.

Judith H. Lock,
Administrative Officer.

[FR Doc. 91–31328 Filed 12–31–91; 12:53 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 30, 1991 and January 6, 13, and 20, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 30

There are no Commission meetings scheduled for the Week of December 30.

Week of January 6—Tentative

Friday, January 10

1:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 13—Tentative

Thursday, January 16

9:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
2:30 p.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, January 17

10:00 a.m.
Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

Week of January 20—Tentative

Tuesday, January 21

1:30 p.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)

Thursday, January 23

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: Dated: December 27, 1991.

William H. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91–31327 Filed 12–30–91; 11:02 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

[FE Docket No. 91-30-NG]

Wes Cana Marketing (U.S.) Inc.; Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

Correction

In notice document 91-23720 appearing on page 49890 in the issue of Wednesday, October 2, 1991, in the first column, in the file line at the end of the document, "FR Doc. 91-23750" should read "FR Doc. 91-23720".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In rule document 91-7888, beginning on page 13751, in the issue of Thursday, April 4, 1991, make the following correction:

§ 226.9 [Corrected]

On page 13756, in the first column, in the sixth line, "§ 2265b(f)(3)(iii)," should read "§ 226.5b(f)(3)(iii),".

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 91-559]

Eligibility and Financial Disclousure Requirements for Directors of the Federal Home Loan Banks

Correction

In the issue of Friday, November 22, 1991, on page 58964, in the second column, in the correction of rule document 91-26825, in the second line, "page 56920" should read "page 56929".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91D-0123]

Draft Guideline for Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications; Availability

Correction

In notice document 91-30150, beginning on page 65737, in the issue of Wednesday, December 18, 1991, make the following corrections:

1. On page 65738, in the first column, in the second full paragraph, in the seventh line, "through" should read "though".
2. On the same page, in the same column, in the third full paragraph, in the fourth line, "Docket" should read "Dockets".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Meetings of the Advisory Committee on Medicare-Physician Relationships

Correction

In notice document 91-25169 beginning on page 52272 in the issue of Friday, October 18, 1991, on page 52273, in the second column, in the file line at the end of the document, "FR Doc. 91-25166" should read "FR Doc. 91-25169".

BILLING CODE 1505-01-D

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities National Council; Meeting

Correction

In notice document 91-25167 appearing on page 52302 in the issue of Friday, October 18, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-25617" should read "FR Doc. 91-25167".

BILLING CODE 1505-01-D

federal register

Thursday
January 2, 1992

Part II

Reader Aids

Cumulative List of Public Laws—First Session of the 102d Congress

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the first session of the 102d Congress. The List of Public Laws will resume when bills are enacted into law during the second session of the 102d Congress, which convenes on January 3, 1992. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-1	H.J. Res. 77	Jan. 14	3	Authorization for Use of Military Force Against Iraq Resolution	$1.00
102-2	H.R. 4	Jan. 30	5	To extend the time for performing certain acts under the internal revenue laws for individuals performing services as part of the Desert Shield Operation.	$1.00
102-3	H.R. 3	Feb. 6	7	Veterans' Compensation Amendments of 1991	$1.00
102-4	H.R. 556	Feb. 6	11	Agent Orange Act of 1991	$1.00
102-5	H.J. Res. 30	Feb. 15	21	To designate February 7, 1991, as "National Girls and Women in Sports Day"	$1.00
102-6	S.J. Res. 76	Mar. 1	23	Commending the Peace Corps and the current and former Peace Corps volunteers on the thirtieth anniversary of the establishment of the Peace Corps.	$1.00
102-7	S.J. Res. 51	Mar. 5	25	To designate the week beginning March 4, 1991, as "Federal Employees Recognition Week".	$1.00
102-8	S.J. Res. 55	Mar. 8	26	Commemorating the two hundredth anniversary of United States-Portuguese diplomatic relations.	$1.00
102-9	S.J. Res. 58	Mar. 11	28	To designate March 4, 1991, as "Vermont Bicentennial Day"	$1.00
102-10	S. 379	Mar. 12	29	National and Community Service Technical Amendments Act of 1991	$1.00
102-11	S.J. Res. 84	Mar. 12	33	Disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendment Act of 1990.	$1.00
102-12	H.R. 555	Mar. 18	34	Soldiers' and Sailors' Civil Relief Act Amendments of 1991	$1.00
102-13	H.J. Res. 98	Mar. 18	43	Designating March 4 through 10, 1991, as "National School Breakfast Week"	$1.00
102-14	H.J. Res. 104	Mar. 20	44	To designate March 26, 1991, as "Education Day, U.S.A."	$1.00
102-15	H.J. Res. 133	Mar. 21	46	Authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week".	$1.00
102-16	H.R. 180	Mar. 22	48	To amend title 38, United States Code, with respect to veterans education and employment programs, and for other purposes.	$1.00
102-17	H.J. Res. 167	Mar. 22	57	Designating June 14, 1991, and June 14, 1992, each as "Baltic Freedom Day"	$1.00
102-18	S. 419	Mar. 23	58	Resolution Trust Corporation Funding Act of 1991	$1.00
102-19	S.J. Res. 59	Mar. 25	67	Designating March 25, 1991, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".	$1.00
102-20	H.R. 1176	Mar. 27	68	Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year 1991.	$1.00
102-21	H.R. 1284	Mar. 28	70	Emergency Supplemental Assistance for Israel Act of 1991	$1.00
102-22	H.R. 1316	Mar. 28	71	Performance Management and Recognition System Amendments of 1991	$1.00
102-23	S.J. Res. 53	Mar. 28	73	To designate April 9, 1991 and April 9, 1992, as "National Former Prisoner of War Recognition Day".	$1.00
102-24	S.J. Res. 83	Mar. 28	74	Entitled "National Day of Prayer and Thanksgiving"	$1.00
102-25	S. 725	Apr. 6	75	Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991	$1.50
102-26	H.R. 1285	Apr. 9	123	Higher Education Technical Amendments of 1991	$1.00
102-27	H.R. 1281	Apr. 10	130	Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991.	$1.00
102-28	H.R. 1282	Apr. 10	161	Operation Desert Shield/Desert Storm Supplemental Appropriations Act, 1991	$1.00
102-29	H.J. Res. 222	Apr. 18	169	To provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees.	$1.00
102-30	H.J. Res. 134	Apr. 18	172	To designate the weeks of April 14 through 21, 1991, and May 3 through 10, 1992, as "Jewish Heritage Week".	$1.00
102-31	H.J. Res. 197	Apr. 18	173	To designate the week of April 15 through 21, 1991, as "National Education First Week"	$1.00
102-32	S. 534	Apr. 23	175	To authorize the President to award a gold medal on behalf of the Congress to General H. Norman Schwarzkopf, and to provide for the production of bronze duplicates of such medal for sale to the public.	$1.00
102-33	S. 565	Apr. 23	177	To authorize the President to award a gold medal on behalf of the Congress to General Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public.	$1.00
102-34	S.J. Res. 119	Apr. 23	179	To designate April 22, 1991, as "Earth Day" to promote the preservation of the global environment.	$1.00
102-35	S.J. Res. 16	Apr. 24	181	Designating the Week of April 21-27, 1991, as "National Crime Victims' Rights Week"	$1.00
102-36	H.J. Res. 218	Apr. 26	182	To designate the week beginning April 21, 1991, and the week beginning April 19, 1992, each as "National Organ and Tissue Donor Awareness Week".	$1.00
102-37	S.J. Res. 64	Apr. 26	183	To authorize the President to proclaim the last Friday of April 1991, as "National Arbor Day".	$1.00
102-38	S.J. Res. 98	May 3	184	To express appreciation for the benefit brought to the Nation by Amtrak during its twenty years of existence.	$1.00
102-39	S.J. Res. 102	May 3	186	Designating the second week in May 1991 as "National Tourism Week"	$1.00
102-40	H.R. 598	May 7	187	Department of Veterans Affairs Health-Care Personnel Act of 1991	$1.75
102-41	H.J. Res. 214	May 8	242	Recognizing the Astronauts Memorial at the John F. Kennedy Space Center as the national memorial to astronauts who die in the line of duty.	$1.00
102-42	H.J. Res. 173	May 14	243	To designate May 1991 and May 1992 as "Asian/Pacific American Heritage Month"	$1.00
102-43	H.J. Res. 194	May 14	244	Designating May 12, 1991, as "Infant Mortality Awareness Day"	$1.00
102-44	H.J. Res. 109	May 15	245	Designating each of the weeks beginning May 12, 1991, and May 10, 1992, as "Emergency Medical Services Week".	$1.00
102-45	H.R. 2122	May 17	247	Emergency Supplemental Persian Gulf Refugee Assistance Act of 1991	$1.00
102-46	S. 258	May 17	249	To correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.	$1.00
102-47	H.J. Res. 154	May 20	250	Designating the month of May 1991, as "National Foster Care Month"	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-48	S.J. Res. 134	May 21	251	Designating May 22, 1991, as "National Desert Storm Reservists Day"	$1.00
102-49	S.J. Res. 127	May 22	253	To designate the month of May 1991, as "National Huntington's Disease Awareness Month".	$1.00
102-50	S. 248	May 24	254	Niobrara Scenic River Designation Act of 1991	$1.00
102-51	H.J. Res. 141	May 29	259	Designating the week beginning May 13, 1991, as "National Senior Nutrition Week"	$1.00
102-52	H.R. 2127	June 6	260	Rehabilitation Act Amendments of 1991	$1.00
102-53	H.R. 831	June 10	266	To designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service".	$1.00
102-54	H.R. 232	June 13	267	To amend title 38, United States Code, with respect to veterans programs for housing and memorial affairs, and for other purposes.	$1.00
102-55	H.R. 2251	June 13	290	Dire Emergency Supplemental Appropriations From Contributions of Foreign Governments And/Or Interest for Humanitarian Assistance to Refugees and Displaced Persons in and Around Iraq as a Result of the Recent Invasion of Kuwait and for Peacekeeping Activities and Other Urgent Needs Act of 1991.	$1.00
102-56	H.J. Res. 219	June 13	296	To designate the week beginning June 9, 1991, as "National Scleroderma Awareness Week".	$1.00
102-57	H.J. Res. 91	June 18	297	Designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week"	$1.00
102-58	H.R. 971	June 18	299	To designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office".	$1.00
102-59	S. 483	June 18	300	Entitled the "Taconic Mountains Protection Act of 1991"	$1.00
102-60	S.J. Res. 111	June 18	302	Marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America.	$1.00
102-61	S. 292	June 19	303	Saguaro National Monument Expansion Act of 1991	$1.00
102-62	S. 64	June 27	305	Education Council Act of 1991	$1.00
102-63	S.J. Res. 159	June 28	319	To designate the month of June 1991, as "National Forest System Month"	$1.00
102-64	S. 909	June 28	320	Semiconductor International Protection Extension Act of 1991	$1.00
102-65	H.R. 2332	July 2	322	To amend the Immigration Act of 1990 to extend for 4 months the application deadline for special temporary protected status for Salvadorans.	$1.00
102-66	H.J. Res. 259	July 2	323	Designating July 2, 1991, as "National Literacy Day"	$1.00
102-67	H.R. 749	July 9	325	To authorize the Secretary of the Interior to accept a donation of land for addition to the Ocmulgee National Monument in the State of Georgia.	$1.00
102-68	H.J. Res. 72	July 9	326	To designate December 7, 1991, as "National Pearl Harbor Remembrance Day"	$1.00
102-69	H.J. Res. 138	July 10	327	Designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week"	$1.00
102-70	H.J. Res. 149	July 10	329	Designating March 1991 and March 1992 both as "Women's History Month"	$1.00
102-71	S. 674	July 10	330	To designate the building in Monterey, Tennessee, which houses the primary operations of the United States Postal Service as the "J.E. (Eddie) Russell Post Office Building", and for other purposes.	$1.00
102-72	H.J. Res 255	July 23	331	Designating the week beginning July 21, 1991, as the "Korean War Veterans Remembrance Week".	$1.00
102-73	H.R. 751	July 25	333	National Literacy Act of 1991	$1.00
102-74	H.J. Res. 279	July 26	363	To declare it to be the policy of the United States that there should be a renewed and sustained commitment by the Federal Government and the American people to the importance of adult education.	$1.00
102-75	H.R. 427	July 26	365	To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes.	$1.00
102-76	H.R. 998	July 26	368	To designate the building in Vacherie, Louisiana, which houses the primary operations of the United States Postal Service as the "John Richard Haydel Post Office Building".	$1.00
102-77	H.R. 2347	July 26	369	To redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility", and for other purposes.	$1.00
102-78	S.J. Res. 121	Aug. 2	370	Designating September 12, 1991, as "National D.A.R.E. Day"	$1.00
102-79	H.J. Res. 181	Aug. 6	372	Designating the third Sunday of August of 1991 as "National Senior Citizens Day"	$1.00
102-80	S.J. Res. 40	Aug. 6	373	Designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week".	$1.00
102-81	S.J. Res. 142	Aug. 6	374	To designate the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week".	$1.00
102-82	H.R. 153	Aug. 6	375	To amend title 38, United States Code, to make miscellaneous administrative and technical improvements in the operation of the United States Court of Veterans Appeals, and for other purposes.	$1.00
102-83	H.R. 2525	Aug. 6	378	Department of Veterans Affairs Codification Act	$1.25
102-84	H.R. 1779	Aug. 10	411	To designate the Federal building being constructed at 77 West Jackson Boulevard in Chicago, Illinois, as the "Ralph H. Metcalfe Federal Building".	$1.00
102-85	S.J. Res. 179	Aug. 10	412	To designate the week beginning August 25, 1991, as "National Parks Week"	$1.00
102-86	H.R. 1047	Aug. 14	414	Veterans' Benefits Programs Improvement Act of 1991	$1.00
102-87	H.R. 1448	Aug. 14	427	To amend the Act of May 12, 1920 (41 Stat. 596), to allow the city of Pocatello, Idaho, to use certain lands for a correctional facility for women, and for other purposes.	$1.00
102-88	H.R. 1455	Aug. 14	429	Intelligence Authorization Act, Fiscal Year 1991	$1.00
102-89	H.R. 2031	Aug. 14	446	Rural Telephone Cooperative Associations ERISA Amendments Act of 1991	$1.00
102-90	H.R. 2506	Aug. 14	447	Legislative Branch Appropriations Act, 1992	$1.00
102-91	H.R. 2901	Aug. 14	472	To authorize the transfer by lease of 4 naval vessels to the Government of Greece	$1.00
102-92	H.J. Res. 166	Aug. 14	473	To designate September 13, 1991, as "Commodore John Barry Day"	$1.00
102-93	H.J. Res. 264	Aug. 14	475	Designating August 1, 1991, as "Helsinki Human Rights Day"	$1.00
102-94	H.J. Res. 309	Aug. 14	478	Designating August 29, 1991, as "National Sarcoidosis Awareness Day"	$1.00
102-95	S. 1593	Aug. 14	479	National Commission on Libraries and Information Science Act Amendments of 1991	$1.00
102-96	S. 1594	Aug. 14	481	Terry Beirn Community Based AIDS Research Initiative Act of 1991	$1.00
102-97	S.J. Res. 72	Aug. 14	483	To designate the week of September 15, 1991, through September 21, 1991, as "National Rehabilitation Week".	$1.00
102-98	H.R. 904	Aug. 17	485	African American History Landmark Theme Study Act	$1.00
102-99	H.R. 991	Aug. 17	487	Defense Production Act Extension and Amendments of 1991	$1.00
102-100	H.R. 1006	Aug. 17	491	Federal Maritime Commission Authorization Act of 1991	$1.00
102-101	H.R. 1143	Aug. 17	493	To authorize a study of nationally significant places in American labor history	$1.00
102-102	H.R. 2123	Aug. 17	495	District of Columbia Budgetary Efficiency Act of 1991	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-103	H.R. 2313	Aug. 17	497	To amend the School Dropout Demonstration Assistance Act of 1988 to extend authorization of appropriations through fiscal year 1993, and for other purposes.	$1.00
102-104	H.R. 2427	Aug. 17	510	Energy and Water Development Appropriations Act, 1992	$1.00
102-105	H.R. 2968	Aug. 17	537	To waive the period of Congressional review for certain District of Columbia acts	$1.00
102-106	H.R. 2969	Aug. 17	539	District of Columbia Emergency Deficit Reduction Act of 1991	$1.00
102-107	H.R. 3201	Aug. 17	541	Emergency Unemployment Compensation Act of 1991	$1.00
102-108	S. 1608	Aug. 17	549	To make Technical Amendments to the Nutrition Information and Labeling Act, and for other purposes.	$1.00
102-109	H.J. Res. 332	Sept. 30	551	Making continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-110	S. 296	Oct. 1	555	Armed Forces Immigration Adjustment Act of 1991	$1.00
102-111	H.R. 3291	Oct. 1	559	Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes.	$1.00
102-112	H.J. Res. 23	Oct. 3	576	To authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week".	$1.00
102-113	H.J. Res. 233	Oct. 3	577	Designating September 20, 1991, as "National POW/MIA Recognition Day", and authorizing display of the National League of Families POW/MIA flag.	$1.00
102-114	S.J. Res. 73	Oct. 3	579	Designating October 1991 as "National Domestic Violence Awareness Month"	$1.00
102-115	S.J. Res. 125	Oct. 3	581	To designate October 1991 as "Polish-American Heritage Month"	$1.00
102-116	S.J. Res. 126	Oct. 3	583	To designate the Second Sunday in October of 1991 as "National Children's Day"	$1.00
102-117	S.J. Res. 151	Oct. 3	585	To designate October 6, 1991, and October 6, 1992, as "German-American Day"	$1.00
102-118	S. 363	Oct. 4	586	To authorize the addition of 15 acres to Morristown National Historical Park	$1.00
102-119	S. 1106	Oct. 7	587	Individuals with Disabilities Education Act Amendments of 1991	$1.00
102-120	S.J. Res. 95	Oct. 7	609	Designating October 1991 as "National Breast Cancer Awareness Month"	$1.00
102-121	S.J. Res. 78	Oct. 8	611	To designate the month of November 1991 and 1992 as "National Hospice Month"	$1.00
102-122	S.J. Res. 156	Oct. 8	612	To designate the week of October 6, 1991, through October 12, 1991, as "Mental Illness Awareness Week".	$1.00
102-123	S.J. Res. 172	Oct. 9	614	To authorize and request the President to proclaim each of the months of November 1991 and 1992 as "National American Indian Heritage Month".	$1.00
102-124	S. 1773	Oct. 9	616	To extend until October 18, 1991, the legislative reinstatement of the power of Indian tribes to exercise criminal jurisdiction over Indians.	$1.00
102-125	H.J. Res. 189	Oct. 10	617	Designating October 8, 1991, as "National Firefighters Day"	$1.00
102-126	H.J. Res. 305	Oct. 10	618	To designate the month of October 1991, as "Country Music Month"	$1.00
102-127	S. 868	Oct. 10	619	Veterans' Educational Assistance Amendments of 1991	$1.00
102-128	S.J. Res. 132	Oct. 10	624	To designate the week of October 13, 1991, through October 19, 1991, as "National Radon Action Week".	$1.00
102-129	H.R. 2935	Oct. 15	625	To designate the building located at 6600 Lorain Avenue in Cleveland, Ohio, as the "Patrick J. Patton United States Post Office Building".	$1.00
102-130	H.R. 2387	Oct. 17	626	Striped Bass Act of 1991	$1.00
102-131	H.J. Res. 303	Oct. 17	628	To designate October 1991 as "Crime Prevention Month"	$1.00
102-132	H.R. 3259	Oct. 18	630	To authorize appropriations for drug abuse education and prevention programs relating to youth gangs and to runaway and homeless youth; and for other purposes.	$1.00
102-133	S.J. Res. 107	Oct. 18	632	To designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day".	$1.00
102-134	H.J. Res. 230	Oct. 21	633	Designating October 16, 1991, and October 16, 1992, each as "World Food Day"	$1.00
102-135	H.R. 3280	Oct. 24	635	Decennial Census Improvement Act of 1991	$1.00
102-136	H.R. 2426	Oct. 25	637	Military Construction Appropriations Act, 1992	$1.00
102-137	H.R. 972	Oct. 28	646	To make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.	$1.00
102-138	H.R. 1415	Oct. 28	647	Foreign Relations Authorization Act, Fiscal Years 1992 and 1993	$2.75
102-139	H.R. 2519	Oct. 28	736	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992.	$1.50
102-140	H.R. 2608	Oct. 28	782	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992.	$1.50
102-141	H.R. 2622	Oct. 28	834	Treasury, Postal Service and General Government Appropriations Act, 1992	$1.50
102-142	H.R. 2698	Oct. 28	878	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1992.	$1.25
102-143	H.R. 2942	Oct. 28	917	Department of Transportation and Related Agencies Appropriations Act, 1992	$1.50
102-144	H.J. Res. 340	Oct. 28	966	To designate October 19 through 27, 1991 as "National Red Ribbon Week for a Drug-Free America".	$1.00
102-145	H.J. Res. 360	Oct. 28	968	Making further continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-146	S.J. Res. 131	Oct. 28	972	Designating October 1991 as "National Down Syndrome Awareness Month"	$1.00
102-147	S.J. Res. 192	Oct. 28	974	Designating October 30, 1991 as "Refugee Day"	$1.00
102-148	H.R. 470	Oct. 30	976	To authorize the Secretary of Transportation to release the restrictions, requirements, and conditions imposed in connection with the conveyance of certain lands to the city of Gary, Indiana.	$1.00
102-149	S.J. Res. 160	Oct. 30	978	Designating the week beginning October 20, 1991, as "World Population Awareness Week".	$1.00
102-150	H.R. 1720	Oct. 31	980	District of Columbia Mental Health Program Assistance Act of 1991	$1.00
102-151	S. 1823	Nov. 5	983	To amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.	$1.00
102-152	H.R. 1046	Nov. 12	985	Veterans' Compensation Rate Amendments of 1991	$1.00
102-153	H.J. Res. 280	Nov. 12	989	To designate the week beginning November 10, 1991, as "Hire a Veteran Week"	$1.00
102-154	H.R. 2686	Nov. 13	990	Department of the Interior and Related Agencies Appropriations Act, 1992	$1.50
102-155	H.J. Res. 175	Nov. 13	1038	To designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week".	$1.00
102-156	H.J. Res. 177	Nov. 13	1039	To designate November 16, 1991, as "Dutch-American Heritage Day"	$1.00
102-157	H.J. Res. 281	Nov. 13	1040	Approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic.	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-158	H.J. Res. 282	Nov. 13	1041	Approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.	$1.00
102-159	S. 1848	Nov. 13	1042	Dropout Prevention Technical Correction Amendment of 1991	$1.00
102-160	S.J. Res. 36	Nov. 13	1043	To designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month".	$1.00
102-161	S.J. Res. 145	Nov. 13	1045	Designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week".	$1.00
102-162	S.J. Res. 188	Nov. 13	1047	Designating November 1991 as "National Red Ribbon Month"	$1.00
102-163	H.J. Res. 374	Nov. 15	1048	Making further continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-164	H.R. 3575	Nov. 15	1049	Emergency Unemployment Compensation Act of 1991	$1.00
102-165	H.J. Res. 140	Nov. 18	1070	Designating November 19, 1991, as "National Philanthropy Day"	$1.00
102-166	S. 1745	Nov. 21	1071	Civil Rights Act of 1991	$1.00
102-167	H.R. 3350	Nov. 26	1101	United States Commission on Civil Rights Reauthorization Act of 1991	$1.00
102-168	H.R. 3402	Nov. 26	1102	Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991.	$1.00
102-169	H.J. Res. 215	Nov. 26	1105	Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day".	$1.00
102-170	H.R. 3839	Nov. 26	1107	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992.	$1.25
102-171	S. 374	Nov. 26	1143	Aroostook Band of Micmacs Settlement Act	$1.00
102-172	H.R. 2521	Nov. 26	1150	Department of Defense Appropriations Act, 1992	$2.00
102-173	S. 1475	Nov. 27	1217	Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991	$1.00
102-174	S.J. Res. 207	Nov. 27	1220	To designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week".	$1.00
102-175	H.R. 2270	Dec. 2	1222	Senior Executive Service Improvements Act	$1.00
102-176	H.J. Res. 125	Dec. 2	1224	To designate the week beginning November 24, 1991, and the week beginning November 22, 1992, each as "National Family Caregivers Week".	$1.00
102-177	H.J. Res. 130	Dec. 2	1226	Designating January 1, 1992, as "National Ellis Island Day"	$1.00
102-178	H.J. Res. 327	Dec. 2	1227	Designating 1992 as the "Year of the Gulf of Mexico"	$1.00
102-179	S. 1568	Dec. 2	1229	To amend the Act incorporating The American Legion so as to redefine eligibility for membership therein.	$1.00
102-180	S. 1720	Dec. 2	1230	Navajo-Hopi Relocation Housing Program Reauthorization Act of 1991	$1.00
102-181	H.R. 3728	Dec. 3	1232	To provide for a 6-month extension of the Commission on the Bicentennial of the Constitution.	$1.00
102-182	H.R. 1724	Dec. 4	1233	To provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary.	$1.00
102-183	H.R. 2038	Dec. 4	1260	Intelligence Authorization Act, Fiscal Year 1992	$1.00
102-184	H.R. 3394	Dec. 4	1278	Tribal Self-Governance Demonstration Project Act	$1.00
102-185	H.R. 3624	Dec. 4	1280	To amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission.	$1.00
102-186	S. 1563	Dec. 4	1282	National Sea Grant College Program Authorization Act of 1991	$1.00
102-187	S.J. Res. 187	Dec. 4	1285	To make a technical correction in Public Law 101-549	$1.00
102-188	S.J. Res. 217	Dec. 4	1286	To authorize and request the President to proclaim 1992 as the "Year of the American Indian".	$1.00
102-189	H.J. Res. 201	Dec. 4	1288	Designating the week beginning December 1, 1991, and the week beginning November 15, 1992, each as "Geography Awareness Week".	$1.00
102-190	H.R. 2100	Dec. 5	1290	National Defense Authorization Act for Fiscal Years 1992 and 1993	$9.50
102-191	H.R. 2629	Dec. 5	1589	Women's Business Development Act of 1991	$1.00
102-192	S.J. Res. 184	Dec. 5	1592	Designating the month of November 1991, as "National Accessible Housing Month"	$1.00
102-193	H.R. 3919	Dec. 6	1593	To temporarily extend the Defense Production Act of 1950	$1.00
102-194	S. 272	Dec. 9	1594	High-Performance Computing Act of 1991	$1.00
102-195	H.R. 1988	Dec. 9	1605	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992	$1.00
102-196	H.R. 3370	Dec. 9	1620	To direct the Secretary of the Interior to carry out a study and make recommendations to the Congress regarding the feasibility of establishing a Native American cultural center in Oklahoma City, Oklahoma.	$1.00
102-197	H.J. Res. 346	Dec. 9	1622	Approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.	$1.00
102-198	S. 1284	Dec. 9	1623	To make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts.	$1.00
102-199	H.R. 525	Dec. 10	1628	To amend the Federal charter for the Boys' Clubs of America to reflect the change of the name of the organization to the Boys & Girls Clubs of America.	$1.00
102-200	H.R. 829	Dec. 10	1630	To amend title 28, United States Code, to make changes in the composition of the Eastern and Western Districts of Virginia.	$1.00
102-201	H.R. 848	Dec. 10	1631	Little Bighorn Battlefield National Monument	$1.00
102-202	H.R. 990	Dec. 10	1634	To authorize additional appropriations for land acquisition at Monocacy National Battlefield, Maryland.	$1.00
102-203	H.R. 3322	Dec. 10	1635	To designate the building in St. Louis, Missouri, which is currently known as the Wellston Station, as the "Gwen B. Giles Post Office Building".	$1.00
102-204	H.R. 3531	Dec. 10	1636	Patent and Trademark Office Authorization Act of 1991	$1.00
102-205	H.R. 3709	Dec. 10	1643	To waive the period of Congressional review for certain District of Columbia acts	$1.00
102-206	H.J. Res. 191	Dec. 10	1644	Designating January 5, 1992 through January 11, 1992 as "National Law Enforcement Training Week".	$1.00
102-207	H.J. Res. 212	Dec. 10	1646	To designate the week beginning February 16, 1992, as "National Visiting Nurse Associations Week".	$1.00
102-208	H.J. Res. 300	Dec. 10	1648	Designating the month of May 1992 as "National Trauma Awareness Month"	$1.00
102-209	H.J. Res. 356	Dec. 10	1649	Designating December 1991 as "Bicentennial of the District of Columbia Month"	$1.00
102-210	H.J. Res. 372	Dec. 10	1651	Designating December 21, 1991, as "Basketball Centennial Day"	$1.00
102-211	H.R. 690	Dec. 11	1652	To authorize the National Park Service to acquire and manage the Mary McLeod Bethune Council House National Historic Site, and for other purposes.	$1.00
102-212	H.R. 794	Dec. 11	1655	To establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes.	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-213	H.R. 948	Dec. 11	1662	To designate the United States courthouse located at 120 North Henry Street in Madison, Wisconsin, as the "Robert W. Kastenmeier United States Courthouse".	$1.00
102-214	H.R. 1099	Dec. 11	1663	Lamprey River Study Act of 1991	$1.00
102-215	H.R. 3012	Dec. 11	1664	White Clay Creek Study Act	$1.00
102-216	H.R. 3169	Dec. 11	1666	To lengthen from five to seven years the expiration period applicable to legislative authority relating to construction of commemorative works on Federal land in the District of Columbia and its environs.	$1.00
102-217	H.R. 3245	Dec. 11	1667	Chattahoochee National Forest Protection Act of 1991	$1.00
102-218	H.R. 3327	Dec. 11	1671	To amend title 38, United States Code, to provide for the designation of an Assistant Secretary of the Department of Veterans Affairs as the Chief Minority Affairs Officer of the Department.	$1.00
102-219	H.R. 3387	Dec. 11	1673	To amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes.	$1.00
102-220	H.R. 3604	Dec. 11	1674	Greer Spring Acquisition and Protection Act of 1991	$1.00
102-221	H.R. 3932	Dec. 11	1676	To improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes.	$1.00
102-222	S. 2050	Dec. 11	1677	To ensure that the ceiling established with respect to health education assistance loans does not prohibit the provision of Federal loan insurance to new and previous borrowers under such loan program, and for other purposes.	$1.00
102-223	S. 2098	Dec. 11	1678	To authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration.	$1.00
102-224	S.J. Res. 198	Dec. 11	1680	To recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.	$1.00
102-225	H.R 3881	Dec. 11	1682	To expand the boundaries of Stones River National Battlefield, Tennessee, and for other purposes.	$1.00
102-226	H.R. 2105	Dec. 11	1685	To designate an area as the "Myrtle Foester Whitmire Division of the Aransas National Wildlife Refuge".	$1.00
102-227	H.R. 3909	Dec. 11	1686	Tax Extension Act of 1991	$1.00
102-228	H.R. 3807	Dec. 12	1691	Conventional Forces in Europe Treaty Implementation Act of 1991	$1.00
102-229	H.J. Res. 157	Dec. 12	1701	Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of "Operation Desert Shield/Desert Storm" Act of 1992.	$1.00
102-230	H.R. 3576	Dec. 12	1720	To amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas.	$1.00
102-231	H.R. 1476	Dec. 12	1722	San Carlos Indian Irrigation Project Divestiture Act of 1991	$1.00
102-232	H.R. 3049	Dec. 12	1733	Miscellaneous and Technical Immigration and Naturalization Amendments of 1991	$1.00
102-233	H.R. 3435	Dec. 12	1761	Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991	$1.00
102-234	H.R. 3595	Dec. 12	1793	Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991	$1.00
102-235	S. 367	Dec. 12	1806	Nontraditional Employment for Women Act	$1.00
102-236	S. 1532	Dec. 12	1812	Abandoned Infants Assistance Act Amendments of 1991	$1.00
102-237	H.R. 3029	Dec. 13	1818	Food, Agriculture, Conservation, and Trade Act Amendments of 1991	$2.75
102-238	S. 1193	Dec. 17	1908	Technical Amendments to Various Indian Laws Act of 1991	$1.00
102-239	S. 1891	Dec. 17	1912	To permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.	$1.00
102-240	H.R. 2950	Dec. 18	1914	Intermodal Surface Transportation Efficiency Act of 1991	$9.50
102-241	H.R. 1776	Dec. 19	2208	Coast Guard Authorization Act of 1991	$1.00
102-242	S. 543	Dec. 19	2236	Federal Deposit Insurance Corporation Improvement Act of 1991	$4.50
102-243	S. 1462	Dec. 20	2394	Telephone Consumer Protection Act of 1991	$1.00

NOTE: The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470). Some laws may not yet be available for purchase.

federal register

Thursday
January 2, 1992

Part III

United States Sentencing Commission

Sentencing Guidelines and Policy Statements for Federal Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments and a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1992. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

DATES: Public comment should be received by the Commission no later than March 2, 1992, in order to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1992.

The Commission has scheduled a public hearing on these amendments for February 25, 1992, at 9:30 a.m.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., suite 1400, Washington, DC 20004, Attention: Guideline Comment. The hearing will be held at the Ceremonial Courtroom, United States Courthouse, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, telephone: (202) 626-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o) and (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rule-making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats, each of which is followed by a statement explaining the reason for the amendment. First, the majority of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, for some amendments, the Commission has published alternative methods of addressing an issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested regarding whether any of the proposed amendments should be made retroactive under this policy statement.

In amendments presenting alternative methods addressing an issue, double brackets denote the alternative methods. In displaying certain proposed amendments, single brackets are used to denote material to be deleted; *italics* are used to denote material to be added.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1992, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

The amendments below are derived from a variety of sources, including: Monitoring and hotline data and case law review; and the recommendations of the Judicial Conference of the United States, the Department of Justice, the Federal Defenders, the Commission's Practitioners Advisory Group, individual judges, probation officers, attorneys, and others.

Note: Publication of an amendment for comment does not necessarily indicate the view of the Commission or any individual Commissioner on the merits of the proposed amendment.

Authority: 28 U.S.C., sections 994 (a), (o), (p), (x).

William W. Wilkins, Jr.,

Chairman.

Section 1B1.3. Relevant Conduct

1(A). Proposed Amendment: Section 1B1.3(a)(1) is amended by deleting:

"All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the",

and inserting in lieu thereof:

"(A) All acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) In the case of a jointly-undertaken criminal activity, whether or not charged as a conspiracy, all reasonably foreseeable acts and omissions of others in furtherance of the jointly-undertaken criminal activity,

that occurred during the";

Section 1B1.3(a)(2) is amended by deleting "such acts and omissions" and inserting in lieu thereof "acts and omissions described in subdivisions (1)(A) and (1)(B) above".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 by deleting the first paragraph and inserting in lieu thereof:

"A 'jointly-undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy. In the case of a jointly-undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that both was in furtherance of the jointly-undertaken criminal activity, and was reasonably foreseeable to the defendant. Because a count may be broadly worded and include the conduct of many participants over a period of time, the scope of the jointly-undertaken criminal activity is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant.

Thus, a determination of the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement) is required. The conduct of others that was in furtherance of, and reasonably foreseeable in connection with, the criminal activity that the defendant agreed to jointly undertake is relevant conduct under this provision. The conduct of others that was not in furtherance of the jointly-undertaken criminal activity, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit or implicit (tacit) agreement, including any agreement fairly imputed to the defendant by his conduct and that of other participants in the criminal activity. For example, where a defendant benefited directly, or expected to benefit directly, from the conduct of others that occurred prior, contemporaneous, or subsequent to the defendant's joining the

criminal activity, such conduct ordinarily may be imputed to be within the scope of the criminal activity the defendant agreed to jointly undertake.

The concept of reasonable foreseeability has no bearing on conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes. The concept of reasonable foreseeability is considered only in relation to the conduct of other participants that is in furtherance of the jointly-undertaken criminal activity.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in the fifth (formerly second) paragraph by deleting " 'would be otherwise accountable' " and inserting in lieu thereof "is accountable";

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in example (a) by deleting "boat" wherever it appears and inserting in lieu thereof in each instance "ship"; by deleting "any claim on his part" and inserting in lieu thereof "his claim"; and by inserting the following additional paragraph:

"Because the defendant aided and abetted the unloading of the marihuana shipment, no determination of the reasonable foreseeability of the acts of others in unloading the shipment is required. If it were found that the defendant's actions, in this example, did not constitute aiding or abetting the importation of the entire shipment, the defendant appropriately would still be accountable for the entire one-ton quantity because the facts of the case (nine other off-loaders, marihuana in bales) clearly establish that a one-ton quantity of marihuana was reasonably foreseeable.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in example (e) in the last sentence by deleting "if" and inserting in lieu thereof "because"; by inserting ("i.e., the importation of the single shipment of marihuana) that" immediately following "criminal activity"; and by deleting "(i.e., the importation of the single shipment of marihuana)".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 by inserting, immediately after example (e), the following additional paragraphs:

"Where the defendant enters an ongoing conspiracy, as in this example, the scope of the specific criminal activity that the defendant agreed to undertake, and thus the defendant's accountability for prior acts of other conspirators, must be determined. One factor that appropriately may be considered in determining the scope of the criminal activity undertaken by the defendant, particularly in a conspiracy that involves repeated conduct (e.g., a series of drug sales over time), is the benefit or expected benefit to the defendant. Where the defendant benefits directly, or expects to benefit directly, from the prior conduct, such conduct ordinarily will be within the scope of the defendant's criminal activity. Where there is no direct benefit, such conduct ordinarily will not be within the scope of the defendant's criminal activity.

f. Defendant J knows about her boyfriend's ongoing drug trafficking activity, but agrees to participate in this activity on only one occasion. Defendant J is held accountable only for the drug quantity involved on that one occasion.

g. Defendant K is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as the defendant sells. The defendant is not accountable for the quantities of drugs sold by the other street-level drug dealers, even if all share a common source of supply, because he is not engaged in a jointly-undertaken criminal activity with them. In contrast, Defendant L, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant L's behavior meets the criteria for a jointly-undertaken criminal activity. Therefore, Defendant L is accountable for the quantities of drugs sold by the four other dealers during the course of his agreement with them.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 2 by deleting the first sentence.

Reason for Amendment: This amendment clarifies the operation of this guideline. Material is moved from the commentary to the guideline itself and rephrased for greater clarity, the discussion of the scope of this provision in the commentary is expanded, and additional examples are inserted.

Illustration of Section 1B1.3 as Amended by Proposed Amendment 1

Section 1B1.3. Relevant Conduct (Factors that Determine the Guideline Range)

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in chapter Two, and (iv) adjustments in chapter Three, shall be determined on the basis of the following:

(1) [All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the]

(A) All acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) In the case of a jointly-undertaken criminal activity, whether or not charged as a conspiracy, all reasonably foreseeable acts and omissions of others in furtherance of the jointly-undertaken criminal activity,

That occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

(2) Solely with respect to offenses of a character for which section 3D1.2(d) would require grouping of multiple counts, all [such acts and omissions] *acts and omissions described in subdivisions (1)(A) and (1)(B) above* that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) All harm that resulted from the acts or omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts or omissions; and

(4) Any other information specified in the applicable guideline.

(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

Commentary

Application Notes:

1. [Conduct "for which the defendant would be otherwise accountable," as used in subsection (a)(1), includes conduct that the defendant counseled, commanded, induced, procured, or willfully caused. (Cf. 18 U.S.C. 2.) In the case of criminal activity undertaken in concert with others, whether or not charged as a conspiracy, the conduct for which the defendant "would be otherwise accountable" also includes conduct of others in furtherance of the execution of the jointly-undertaken criminal activity that was reasonably foreseeable by the defendant. Because a count may be broadly worded and include the conduct of many participants over a substantial period of time, the scope of the jointly-undertaken criminal activity, and hence relevant conduct, is not necessarily the same for every participant. Where it is established that the conduct was neither within the scope of the defendant's agreement, nor was reasonably foreseeable in connection with the criminal activity the defendant agreed to jointly undertake, such conduct is not included in establishing the defendant's offense level under this guideline.]

A "jointly-undertaken criminal activity" is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy. In the case of a jointly-undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that both was in furtherance of the jointly-undertaken criminal activity, and was reasonably foreseeable to the defendant. Because a count may be broadly worded and include the conduct of many participants over a period of time, the scope of the jointly-undertaken criminal activity is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant.

Thus, a determination of the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement) is required. The conduct of others that was in furtherance of, and reasonably foreseeable in connection with, the criminal activity that the defendant agreed to jointly undertake is relevant conduct under this provision. The conduct of others that was not in furtherance of the jointly-undertaken criminal activity, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit or implicit (tacit) agreement, including any agreement fairly imputed to the defendant by his conduct and that of other participants in the criminal activity. For example, where a defendant benefited directly, or expected to benefit directly, from the conduct of others that occurred prior, contemporaneous, or subsequent to the defendant's joining the criminal activity, such conduct ordinarily may be imputed to be within the scope of the criminal activity the defendant agreed to jointly undertake.

The concept of reasonable foreseeability has no bearing on conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes. The concept of reasonable foreseeability is considered only in relation to the conduct of other participants that is in furtherance of the jointly-undertaken criminal activity.

In the case of solicitation, misprision, or accessory after the fact, the conduct for which the defendant ["would be otherwise accountable"] *is accountable* includes all conduct relevant to determining the offense level for the underlying offense that was known, or reasonably should have been known, by the defendant.

Illustrations of Conduct for Which the Defendant is Accountable

* * * * *

a. Defendant A, one of ten off-loaders hired by Defendant B, was convicted of importation of marihuana, as a result of his assistance in off-loading a [boat] *ship* containing a one-ton shipment of marihuana. Regardless of the number of bales of marihuana that he actually unloaded, and notwithstanding [any claim on his part] *his claim* that he was neither aware of, nor could reasonably foresee, that the [boat] *ship* contained this quantity of marihuana, Defendant A is held accountable for the entire one-ton quantity of marihuana on the [boat] *ship* because he aided and abetted the unloading, and hence the importation, of the entire shipment.

Because the defendant aided and abetted the unloading of the marihuana shipment, no determination of the reasonable foreseeability of the acts of others in unloading the shipment is required. If it were found that the defendant's actions, in this example, did not constitute aiding or abetting the importation of the entire shipment, the defendant appropriately would still be accountable for the entire one-ton quantity because the facts of the case (nine other off-loaders, marihuana in bales) clearly establish that a one-ton quantity of marihuana was reasonably foreseeable.

* * * * *

e. Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. For the purposes of determining the offense level under this guideline, Defendant J is accountable for the entire single shipment of marihuana he conspired to help import and any acts or omissions in furtherance of the importation that were reasonably foreseeable. He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I [if] *because* those acts were beyond the scope of, and not reasonably foreseeable in connection with, the criminal activity *(i.e., the importation of the single shipment of marihuana) that* he agreed to jointly undertake with Defendants H and I [(i.e., the importation of the single shipment of marihuana)].

Where the defendant enters an ongoing conspiracy, as in this example, the scope of the specific criminal activity that the defendant agreed to undertake, and thus the defendant's accountability for prior acts of other conspirators, must be determined. One factor that appropriately may be considered in determining the scope of the criminal activity undertaken by the defendant, particularly in a conspiracy that involves repeated conduct (e.g., a series of drug sales over time), is the benefit or expected benefit to the defendant. Where the defendant benefits directly, or expects to benefit directly, from the prior conduct, such conduct ordinarily will be within the scope of the defendant's criminal activity. Where there is no direct benefit, such conduct ordinarily will not be within the scope of the defendant's criminal activity.

f. Defendant J knows about her boyfriend's ongoing drug trafficking activity, but agrees to participate in this activity on only one occasion. Defendant J is held accountable only for the drug quantity involved on that one occasion.

g. Defendant K is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as the defendant sells. The defendant is not accountable for the quantities of drugs sold by the other street-level drug dealers, even if all share a common source of supply, because he is not engaged in a jointly-undertaken criminal activity with them. In contrast, Defendant L, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant L's behavior meets the criteria for a jointly-undertaken criminal activity. Therefore, Defendant L is accountable for the quantities of drugs sold by the four other dealers during the course of his agreement with them.

2. ["Such acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction," as used in subsection (a)(2), refers to acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that were part of the same course of conduct or common scheme or plan as the offense of conviction.]

* * * * *

(B). Proposed Amendment: The Commentary to section 1B1.3 captioned "Application Notes" is amended by inserting the following additional notes:

"8. 'Common scheme or plan' and 'same course of conduct' are two closely-related concepts.

(A) Common scheme or plan. For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other, and linked by common evidence. Factors that appropriately are considered in this determination include common victims, common accomplices, common purpose, and similar modus operandi. For example, the conduct of five defendants who together defrauded a group of investors by computer manipulations that unlawfully transferred funds over an eighteen-month period would qualify as a common scheme or plan on the basis of any of the above listed factors; i.e., the commonality of victims (the same investors were defrauded on an ongoing basis), commonality of offenders (the conduct constituted an ongoing conspiracy), commonality of purpose (to defraud the group of investors), and similarity of modus operandi (the same or similar computer manipulations were used to execute the scheme). Offenses may meet the criteria of a common scheme or plan whether or not they fall within the time frame that would also qualify them as part of the same course of conduct.

(B) Same course of conduct. Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors appropriate to consider in this determination are the time interval between the offenses and the similarity of the offenses. As section 1B1.3(a)(2) applies only to offenses of a character that would be grouped under § 3D1.2(d), such offenses will be similar in character (e.g., a series of thefts, a series of thefts and forgeries, or a series of drug sales). As a general—but not absolute—standard, offenses that are similar in character and are committed at intervals of 120 days or less appropriately are considered as part of the same course of conduct. Note that in the case of a series of such offenses committed at intervals of 120 days or less (e.g., a series of four thefts each 90 days apart) all the offenses ordinarily would be considered part of the same course of conduct even though the total time from the first to last offense may have exceeded 120 days.

Due to the nature of tax offenses, a different time interval between offenses is

ordinarily appropriate for this determination. For example, a failure to file income tax returns for consecutive years, or the filing of fraudulent income tax returns in consecutive years, ordinarily would constitute the same course of conduct because such returns are required only at yearly intervals. The determination of the same course of conduct or common scheme or plan in tax cases is addressed in Application Note 3 of the Commentary to section 2T1.1 (Tax Evasion).

Although the term 'same course of conduct' may also be used in connection with dissimilar offenses committed within a short span of time (e.g., a 'spree' in which a defendant assaults a neighbor, steals a car, and unlawfully possesses a controlled substance within a period of several hours appropriately might be considered the same course of conduct), this facet of the term has no applicability to cases under section 1B1.3(a)(2) because § 1B1.3(a)(2) only applies to offenses of a similar character.".

Reason for Amendment: This amendment provides guidance as to the scope of the terms "same course of conduct" and "common scheme or plan."

Section 1B1.8. Use of Certain Information

2(A). Proposed Amendment: The Commentary to section 1B1.8 captioned "Application Notes" is amended in Note 1 by deleting "this guideline" and inserting in lieu thereof "the guideline itself", by inserting "(an upward departure, or a sentence at a higher point within the applicable guideline range)" immediately following "increased sentence", and by inserting the following additional sentence at the end:

"In contrast, in determining whether a downward departure from the applicable guideline range is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities) and the extent of any such downward departure, consideration of such information is appropriate.".

Reason for Amendment: This amendment clarifies the operation of the guideline and policy statements contained in the accompanying commentary. Under this section, (1) information covered by the guideline may not be used to determine the applicable guideline range; (2) an upward departure on the basis of such information would be contrary to the Commission's policy statement contained in Application Note 1 (and, consequently, would be appealable as unreasonable); and (3) the use of such information to set a higher sentence within the applicable guideline range also would be contrary to the Commission's policy statement contained in Application Note 1. In contrast, use of such information would be appropriate in considering whether, and to what extent, a downward departure under section 5K1.1 (Substantial Assistance to Authorities) is warranted.

(B). Proposed Amendment: Section 1B1.8(a) is amended in the first sentence by inserting "or the defendant" immediately following "others".

The Commentary to section 1B1.8 captioned "Application Notes" is amended in Note 1 in the second sentence by inserting "or himself" immediately following "co-conspirators", and in the third sentence by inserting "or to disclose additional unlawful conduct of himself" immediately following "offenders".

Reason for Amendment: Section 1B1.8 currently does not permit the government to agree not to use self-incriminating information against a defendant who wishes to plead and cooperate unless the cooperation consists of "providing information concerning unlawful activities of others." As a result, some have argued that defendants who have no such information have no incentive to plead guilty and cooperate other than the two-level reduction for acceptance of responsibility. This amendment broadens § 1B1.8 to provide that incriminating information provided by the defendant as part of a cooperation argument with the government shall not be used to determine the applicable guideline range in cases in which the only information provided pertains to the defendant's own unlawful activities.

Proposed New Section: Section 1B1.12 Persons Sentenced Under the Federal Juvenile Delinquency Act (Policy Statement)

3. Proposed Amendment: Chapter One, part B, is amended by inserting at the end:

Section 1B1.12. Persons Sentenced Under the Federal Juvenile Delinquency Act (Policy Statement)

(a) The sentencing guidelines do not apply to a defendant sentenced under the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031–5042). Nevertheless, the guidelines can provide an appropriate starting point for considering a sentence in such cases.

(b) A sentence for a juvenile delinquent that is above the guideline range applicable to an otherwise similarly situated adult defendant should be accompanied by specific reasons justifying such sentence.

(c) To the extent that a juvenile delinquent's age and youthfulness, and lesser culpability associated with such age and youthfulness, distinguish the juvenile delinquent from an otherwise similarly situated adult defendant, a sentence that is below the guideline range applicable to an otherwise similarly situated adult defendant may be appropriate.".

Reason for Amendment: This amendment adds a policy statement addressing the sentencing of juvenile delinquents. Currently, the guidelines provide no direction for the sentencing of juvenile delinquents. This amendment is consistent with the thrust of 18 U.S.C. 3553(b), which provides: "In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to applicable policy statements of the Sentencing Commission."

Chapter Two, Part A, Subpart 3—Criminal Sexual Abuse

4(A). Proposed Amendment: Section 2A3.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse or assault with the intent to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply section 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).".

Section 2A3.4 is amended by inserting the following additional subsection:

"(c) Cross References

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse or assault with the intent to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply section 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).".

(2) If the offense involved criminal sexual abuse of a minor (as defined in 18 U.S.C. 2243(a)), or attempt to commit criminal sexual abuse of a minor, apply section 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above.".

Reason for Amendment: This amendment cross references section 2A3.2 to section 2A3.1, and section 2A3.4 to sections 2A3.1 and 2A3.2. A review of cases sentenced under these guidelines indicates that a significant proportion of cases sentenced under section 2A3.2 and section 2A3.4 clearly involved conduct that would more appropriately be covered under an offense guideline applicable to more serious sexual abuse cases. The proposed cross references are designed to address this issue.

A report concerning the sexual abuse guidelines and related guidelines involving minor victims is available for inspection at the Commission's offices.

(B). Proposed Amendment: Section 2A3.1(b)(3) is amended by inserting:

"(A)" immediately following "victim was"; and by deleting "was a corrections employee, or" and inserting in lieu thereof ", or (B)".

Section 2A3.1 is amended by inserting the following additional subsection:

"(d) Special Instruction

(1) If the offense occurred in a correctional facility and the victim was a corrections employee, the offense shall be deemed to have an official victim for purposes of subsection (a) of section 3A1.2 (Official Victim).".

The Commentary to section 2A3.1 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following additional note:

"3. Subsection (b)(3), as it pertains to a victim in the custody, care, or supervisory control of the defendant, is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.".

The Commentary to section 2A3.2 captioned "Application Notes" is amended by renumbering Note 2 as Note 3 and inserting the following additional note:

"2. Subsection (b)(1) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.".

The Commentary to section 2A3.4 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following additional note:

"3. Subsection (b)(3) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim realtionship.".

Reason for Amendment: This amendment removes an anomaly between section 2A3.1(b)(3) and section 3A1.2(a). In addition, this amendment adds application notes to clarify the scope of sections 2A3.1(b)(3), 2A3.2(b)(1), and 2A3.4(b)(3), using language derived from application notes pertaining to similar specific offense characteristics in chapter Two, part G.

Section 2B1.1 Larceny, Embezzlement, and Other Forms of Theft;

Section 2F1.1 Fraud and Deceit

5. Proposed Amendment: Section 2B1.1(b) is amended by deleting subdivision (5); by renumbering subdivisions (6) and (7) as (5) and (6); and by deleting subdivision (1) in its entirety and inserting in lieu thereof the following:

"(1) If the loss exceeded $100, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $100 or less	no increase
(B) More than $100	add 1
(C) More than $1,000	add 2
(D) More than $2,000	add 3
(E) More than $3,500	add 4
(F) More than $6,000	add 5
(G) More than $11,000	add 6
(H) More than $20,000	add 7
(I) More than $35,000	add 8
(J) More than $60,000	add 9
(K) More than $100,000	add 10
(L) More than $175,000	add 11
(M) More than $300,000	add 12
(N) More than $500,000	add 13
(O) More than $900,000	add 14
(P) More than $1,500,000	add 15
(Q) More than $2,750,000	add 16
(R) More than $5,000,000	add 17
(S) More than $8,500,000	add 18
(T) More than $15,000,000	add 19
(U) More than $25,000,000	add 20
(V) More than $45,000,000	add 21
(W) More than $80,000,000	add 22."

The Commentary to section 2B1.1 captioned "Application Notes" is amended by deleting " 'More than minimal planning,' 'firearm,' " and inserting in lieu thereof " 'Firearm' "; and by deleting Application Note 13 in its entirety.

The Commentary to section 2B1.1 captioned "Background" is amended by deleting the second paragraph in its entirety.

Section 2F1.1(b) is amended by deleting subdivision (2); by renumbering subdivisions (3) through (6) as (2) through (5); and by deleting subdivision (1) in its entirety and inserting in lieu thereof the following:

"(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $3,500	add 2
(D) More than $6,000	add 3
(E) More than $11,000	add 4
(F) More than $20,000	add 5
(G) More than $35,000	add 6
(H) More than $60,000	add 7
(I) More than $100,000	add 8
(J) More than $175,000	add 9
(K) More than $300,000	add 10
(L) More than $500,000	add 11
(M) More than $900,000	add 12
(N) More than $1,500,000	add 13
(O) More than $2,750,000	add 14
(P) More than $5,000,000	add 15
(Q) More than $8,500,000	add 16
(R) More than $15,000,000	add 17
(S) More than $25,000,000	add 18
(T) More than $45,000,000	add 19
(U) More than $80,000,000	add 20.".

The Commentary to section 2F1.1 captioned "Application Notes" is amended by deleting Application Notes 2 and 3 in their entirety and by renumbering Application Notes 4 through 18 as Application Notes 2 through 16.

The Commentary to section 2F1.1 captioned "Background" is amended by deleting the second and third paragraphs in their entirety.

Reason for Amendment: This amendment seeks to increase the clarity of sections 2B1.1 and 2F1.1 and to cause their application to be more uniform. The specific offense characteristic of "more than minimal planning" has proven difficult to apply consistently in practice. This amendment would eliminate the specific offense characteristic of "more than minimal planning" and build the two-level increase for "more than minimal planning" into the loss tables. This would be accomplished by extending the loss tables by two additional levels, thereby spreading out the loss amounts. The effect would be to provide no increase for "more than minimal planning" at the lowest loss amounts, to provide for a full two-level increase at the highest loss amounts, and to taper the two-level increase into the loss tables as loss amounts increase.

Additional Issues for Comment: 1. As the Commission considers revisions to the loss table in sections 2B1.1 and 2F1.1, it will consider comparable changes to other guideline sections that contain loss tables, including section 2T4.1. The Commission requests comment with regard to the conforming changes appropriate if the loss tables are revised in sections 2B1.1 and 2F1.1.

2. In connection with this amendment the Commission is considering a number

of possible loss tables. Comment is requested on the tables set forth below. The tables differ with regard to the rate at which the loss amounts increase. The tables in the proposed amendment above contain loss amounts that increase at approximately a constant rate. Tables 1 and 2 below are constructed such that the rate of increase gradually declines, with the more rapid rate of decline in Table 2. If Table 1 or Table 2 is used for section 2F1.1, a comparable table will be used for section 2B1.1.

Table 3 below is constructed with two-level rather than one-level increases. A table with two-level increases is being considered because it should reduce the frequency with which sentencing hearings would be necessary in order to determine the applicable offense level. By reducing the length of the table and increasing the spread between loss amounts, factual disputes should arise less frequently relative to the appropriate offense level. If a table such as Table 3 is used for section 2F1.1, a comparable table will be used for section 2B1.1.

Table 1: Alternative Fraud Table

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $4,000	add 2
(D) More than $8,000	add 3
(E) More than $16,000	add 4
(F) More than $31,000	add 5
(G) More than $60,000	add 6
(H) More than $110,000	add 7
(I) More than $200,000	add 8
(J) More than $365,000	add 9
(K) More than $650,000	add 10
(L) More than $1,200,000	add 11
(M) More than $2,000,000	add 12
(N) More than $3,350,000	add 13
(O) More than $5,500,000	add 14
(P) More than $9,000,000	add 15
(Q) More than $15,000,000	add 16
(R) More than $23,000,000	add 17
(S) More than $36,000,000	add 18
(T) More than $54,000,000	add 19
(U) More than $80,000,000	add 20.

Table 2: Alternative Fraud Table

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $4,000	add 2
(D) More than $7,500	add 3
(E) More than $15,000	add 4
(F) More than $25,000	add 5
(G) More than $50,000	add 6
(H) More than $90,000	add 7
(I) More than $160,000	add 8
(J) More than $285,000	add 9
(K) More than $500,000	add 10
(L) More than $885,000	add 11
(M) More than $1,500,000	add 12
(N) More than $2,500,000	add 13
(O) More than $4,500,000	add 14
(P) More than $7,500,000	add 15
(Q) More than $12,000,000	add 16
(R) More than $20,000,000	add 17
(S) More than $32,000,000	add 18
(T) More than $50,000,000	add 19
(U) More than $80,000,000	add 20.

Table 3: Alternative Fraud Table

(1) If the loss exceeded $3,500, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $3,500 or less	no increase
(B) More than $3,500	add 2
(C) More than $11,000	add 4
(D) More than $35,000	add 6
(E) More than $110,000	add 8
(F) More than $350,000	add 10
(G) More than $1,100,000	add 12
(H) More than $3,300,000	add 14
(I) More than $10,000,000	add 16
(J) More than $30,000,000	add 18
(K) More than $80,000,000	add 20.

Section 2B1.1. Larceny, Embezzlement, and Other Forms of Theft

Section 2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

Section 2F1.1. Fraud and Deceit

6. Proposed Amendment: Section 2B1.1(b) is amended by renumbering subdivision (7) as (8), and by inserting the following as subdivision (7):

"(7) If the offense affected a financial institution, increase by 4 levels.".

Section 2B4.1(b) is amended by renumbering subdivision (2) as (3), and by inserting the following as subdivision (2):

"(2) If the offense affected a financial institution, increase by 4 levels.".

Section 2F1.1 is amended by renumbering subdivision (5) as (6), and by inserting the following as subdivision (5):

"(5) If the offense affected a financial institution, increase by 4 levels.".

Reason for Amendment: This amendment would increase the sentences for financial institution fraud, theft, and bribery over the entire range of offense levels, including those at the lower and middle levels, in addition other enhancements already in these guidelines. Under this amendment, embezzlement of $5,000 from a financial institution, for example, would have an offense level four levels higher than embezzlement of the same amount from an individual or from another type of institution. The purpose of this amendment would be to reflect the increases by Congress during the past several years in the maximum terms of imprisonment from 20 to 30 years for violations of title 18 bank fraud and embezzlement offenses.

Section 2D.1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)

7. Issue for Comment: The Commission requests comment regarding the removal or modification of the current limitations on offense levels for the distribution of Schedule III, IV, and V controlled substances, anabolic steroids, and Schedule I and II depressants, so that violations involving large quantities of these substances would result in higher offense levels. Currently, for example, a defendant who violates the law by selling hundreds of kilograms of a Schedule I or II depressant or a Schedule III substance receives the same offense level (level 20) as a defendant who sells 20 kilograms. Schedule I and II depressants include, for example, methqualone (Schedule I) and glutethimide (recently moved to Schedule II from Schedule III), which are used with codeine preparations as a heroin substitute. Schedule III substances, which have a five-year statutory maximum, include codeine preparations such as Tylenol or aspirin with codeine. Section 2D1.1 also limits the offense levels for Schedule IV substances (level 12 for 20 kilograms or more), which have a three-year statutory maximum sentence of imprisonment, and Schedule V substances (level 8 for 20 kilograms or more), which have a one-year statutory maximum sentence of imprisonment.

Chapter Two, Part L—Offenses Involving Immigration, Naturalization, and Passports

8. Proposed Amendment: Section 2L1.1(b)(2) is amended by deleting:

"If the defendant previously has been convicted of smuggling, transporting, or harboring an unlawful alien, or a related offense, increase by 2 levels.",

and inserting in lieu thereof:

"If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of unlawful aliens smuggled, transported, or harbored	Increase in level
6-11	add 1
12-24	add 2
25-49	add 3
50-99	add 4
100 or more	add 5."

The Commentary to section 2L1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

"The 'number of unlawful aliens smuggled, transported, or harbored' does not include the defendant.".

The Commentary to section 2L1.1 captioned "Application Notes" is amended in Note 8 in the first sentence by deleting "large numbers of aliens or".

The Commentary to section 2L1.1 captioned "Application Notes" is amended by deleting Notes 2, 3 and 4, and renumbering Notes 5, 6, 7, 8 and 9, as 2, 3, 4, 5, and 6 respectively.

The Commentary to section 2L1.1 captioned "Background" is amended by deleting the last sentence and inserting in lieu thereof:

"Where the offense was committed for profit, the offense level increases with the number of unlawful aliens smuggled, imported, or harbored. In large scale cases, an additional adjustment from § 3B1.1 (Aggravating Role) typically will apply to the most culpable defendants.".

Conforming Amendments: Section 2L2.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the offense involved six or more sets of documents, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of sets of documents	Increase in level
6-11	add 1
12-24	add 2
25-49	add 3
50-99	add 4
100 or more	add 5.".

The Commentary to section 2L2.1 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes" and by inserting the following additional Note:

"2. Where it is established that multiple documents are part of a set intended for use by a single person, treat the set as one document.".

Section 2L2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the offense involved six or more passports, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of passports	Increase in level
6-11	add 1
12-24	add 2
25-49	add 3
50-99	add 4
100 or more	add 5.".

Section 3D1.2(d) is amended in the second paragraph by inserting "sections 2L1.1, 2L2.1, 2L2.3" in the appropriate place by section; and in the third paragraph by deleting "2L1.1, 2L2.1," and "2L2.3,".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 3 by deleting example 7.

Reason for Amendment: Currently, section 2L1.1 provides the same offense level for a defendant who smuggles, transports, or harbors 1, 5, 25, 50, or any number of unlawful aliens. The addition of specific offense characteristic (b)(2) to section 2L1.1 in the April 1987 guidelines was intended to conform the guidelines to the offense level indicated by past practices data for "ongoing criminal conduct". However, the specific offense characteristic "prior conviction for the same or similar offense" is not a good proxy for such conduct. Moreover, the inclusion of a prior criminal record variable in the offense guideline seems inconsistent with the general treatment of prior record as a separate dimension in the guidelines.

This amendment addresses this issue by substituting the number of aliens smuggled, transported, or harbored as a more direct measure of the scope of the offense. Consistent with the Commission's general approach, the offense level increases gradually with the number of aliens. It should also be noted that § 3B1.1 (Aggravating Role) generally provides an additional increase of 2, 3, or 4 levels for organizers, managers, and supervisors in large-scale cases because such operations typically involve lower-level participants. Thus, the proposed table in section 2L1.1(b)(2) (pertaining to the number of aliens) is designed to work in conjunction with the operation of enhancements from section 3B1.1.

Additional Issues for Comment: The Commission requests comment on whether enhancements for death or bodily injury should be incorporated into this guideline and, if so, the appropriate levels for such enhancements, and whether the level of enhancement should vary with the defendant's state of mind (e.g., knowing, reckless, criminally negligent). Or, are such issues best addressed as guideline departures? The Commission also requests comment on whether an enhancement for a firearm or other dangerous weapon should be included and, if so, whether the definition and enhancement in section 2D1.1 should be used; or whether this factor also is better addressed as a guideline departure. The Commission also requests comment on whether these guidelines should include any additional specific offense characteristics.

Section 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

9. Proposed Amendment: [[Option 1: Section 2N2.1 is amended by inserting the following additional subsection:

"(b) Cross Reference

(1) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to section 2N2.1 captioned "Application Notes" is amended by deleting Note 2 as follows:

"2. If the offense involved theft, fraud, bribery, revealing trade secrets, or destruction of property, apply the guideline applicable to the underlying conduct, rather than this guideline.",

and inserting in lieu thereof:

"2. The cross reference at subsection (b) addresses cases in which the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline (e.g., theft, fraud, bribery, revealing trade secrets, or destruction of property).".]]

[[Option 2: Section 2N2.1 is deleted in its entirety, and the following is inserted in lieu thereof:

"Section 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

(a) Base Offense Level: 6

(b) Special Offense Characteristics

(1) If the defendant committed the offense after a prior conviction under the Federal Food, Drug and Cosmetic Act or similar state law, increase by 2 levels.

(2) If the offense involved violation of any judicial or administrative order, injunction, decree or process, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(3) If the offense created or involved a public health risk or was committed with reckless disregard for such risk, increase by 4 levels. If the resulting offense level is less than level 13, increase to level 13.

"(c) Cross Reference

(1) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.

Commentary

Application Notes:

1. The base offense level assumes a regulatory violation. If only negligence was involved, a downward departure may be warranted. If willful conduct was involved, an upward departure may be warranted. See chapter Five, part K (Departures).

2. Subsection (b)(1) applies to offenders convicted of a second offense under 21 U.S.C. 333(a)(2), which is a felony, and to offenders who have been convicted of similar state offenses.

3. The term 'public health risk' in subsection (b)(3) includes, for example, the risk of illness, adverse side effects, or allergic reaction. It also includes the risk that affected persons will forego needed treatment. Subsection (b)(3) applies to such risk even if the adverse consequences are of short-term duration or not particularly grave. If the offense involved a risk of particularly serious bodily injury or death, an upward departure may be warranted.

4. If death, bodily injury, extreme psychological injury (other than as a result of a public health risk), property damage, or monetary loss resulted, an upward departure may be warranted. See chapter Five, part K (Departures).

5. The Commission has not yet promulgated a guideline for violations of 21 U.S.C. 331(t) (the Prescription Drug Marketing Act).".]]

Reason for Amendment: Option 1 converts the "instruction" in Application Note 2 of the Commentary to a cross reference in the guideline itself to conform with the structure of the remainder of the guidelines. Option 2 incorporates Option 1, but in addition provides specific offense characteristics and revised commentary to distinguish the different circumstances under which this offense can be committed.

Section 2Q1.2 Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification

10. Proposed Amendment: Section 2Q1.2(b)(4) is amended by inserting the following at the end: "Do not apply this adjustment if an adjustment from (b)(1) applies."

Reason for Amendment: The purpose of this amendment is to clarify the intent of the guideline and eliminate "double-counting." A review of cases sentenced under this guideline indicates that some courts have increased the offense level under subdivision (b)(1), based upon a "discharge, release, or emission" without a permit or in violation of a permit, and also increased the offense level under subdivision (b)(4), because the discharge, release, or emission occurred "without a permit or in violation of a permit." Yet, in some cases, the "discharge, release, or emission" is not a violation of law unless it occurs "without a permit or in violation of a permit." Accordingly, it has been contended that applying both of these subsections in the same case is inappropriate double-counting.

Additional Issues for Comment: 1. In conjunction with this amendment, the Commission is reconsidering the appropriate adjustment for offenses involving a discharge, release, or emission of a pollutant. Currently, the guideline provides a 4-level, or 6-level increase under subsections (b)(1)(A) and (b)(1)(B), respectively. Comment is requested on whether these adjustments should be increased by 2–4 levels each to provide an 6 or 8 level increase, and 8 or 10 level increase, respectively; or whether other adjustments should be made to the specific characteristics in subdivisions (b)(1) and (b)(4) to address the perception of double counting.

2. If the proposed amendment is adopted, a comparable amendment to section 2Q1.3 (Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification) may be warranted. Comment is requested whether the Commission should make changes in the structure and specific offense characteristics of section 2Q1.3 consistent with any changes made in section 2Q1.2.

Section 2Q2.1 Specially Protected Fish, Wildlife, and Plants; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

11. Proposed Amendment: Section 2Q2.1(b)(1) is amended by deleting "involved a commercial purpose" and inserting in lieu thereof "was (A) committed for pecuniary gain or (B) involved a pattern of similar violations".

Section 2Q2.1(b)(2) is amended by inserting "(A)" immediately before "involved" and by inserting "or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants" immediately following "law".

Section 2Q2.1(b)(3)(B) is amended by deleting "a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation" and inserting in lieu thereof "(i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 CFR 216.15), (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 CFR part 17), or (iii) fish, wildlife, or plants that are listed as endangered in appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 CFR part 23)".

The Commentary to section 2Q2.1 is amended by inserting in the appropriate place the following:

"Application Notes:

1. An offense 'committed for pecuniary gain' includes market transactions, barter transactions, and activities designed to increase gross revenue or reduce losses (e.g., when a farmer destroys migratory birds to prevent their consumption of cereal grains).

2. For purposes of subsection (b)(2), the quarantine requirements include those set forth in 9 CFR part 92, and 7 CFR chapter III.

3. For purposes of subsection (b)(3)(A), 'market value' may be determined from any reliable information available.".

The Commentary to section 2Q2.1 captioned "Background" is amended by deleting "involved a commercial purpose" and inserting in lieu thereof "was committed for pecuniary gain", and by deleting "species exceeded $2,000 or the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the population of the species or to a discrete subpopulation of the species" and inserting in lieu thereof "fish, wildlife, or plants exceeded $2,000, or involved certain endangered, threatened, or depleted species".

Reason for Amendment: This amendment is designed to strengthen the deterrent effect of the sanctions for violations covered by this guideline. The amendment expands the specific offense characteristic in subsection (b)(1) to cover other categories of offenses that appear to be equally serious to those committed for a commercial purpose. In addition, the amendment expands the specific offense characteristic in subsection (b)(2) to cover other comparable types of risk of harm. Furthermore, the amendment modifies the specific offense characteristic in subsection (b)(3) to better encompass the types of cases that the Commission intended to cover; experience has shown that courts have had difficulty applying this subsection.

Additional Issues for Comment: 1. Should an additional specific offense characteristic be added, providing for a two-level increase if the offense involved more than minimal planning? If so, should the increase be an alternative to, or in addition to, the increase for the

specific offense characteristic in section 2Q2.1(b)(1)?

2. When the specific offense characteristic in section 2Q2.1(b)(1) is applicable, should the magnitude of the increase in levels be greater? If so, should there be a three-level or a four-level increase?

Chapter Two, Part S—Money Laundering and Monetary Transaction Reporting

12. Proposed Amendment: Section 2S1.4 is amended in the title by inserting at the end "; Willful Failure to File Form 8300; Filing False Form 8300".

The Commentary to section 2S1.4 captioned "Statutory Provision" is amended by inserting "26 U.S.C. 7203, 7206;" immediately before "31 U.S.C. 5316"; and in the caption by deleting "Provision" and inserting in lieu thereof "Provisions".

The Commentary to section 2S1.4 captioned "Application Notes" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

"2. Violations of 26 U.S.C. 7203 and 7206 are covered by this offense guideline if they involve (A) willfully failing to file a Form 8300 (a willful violation of 26 U.S.C. 6050I), or (B) willfully filing a false Form 8300.".

Conforming Amendments: The Commentary to section 2S1.3 captioned "Statutory Provisions" is amended by deleting "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I);".

The Commentary to sections 2T1.1–2T1.4 and Statutory Index are amended to reference the inclusion of certain violations of 26 U.S.C. 7203 and 7206 in section 2S1.4.

Section 3D1.2(d) is amended in the second paragraph by inserting ", section 2S1.4" immediately following "2S1.3".

Reason for Amendment: Certain violations of 26 U.S.C. 7203 and 7206 are more closely comparable to violations covered by section 2S1.4, added in November 1991, than to the guidelines presently referenced to these violations. This amendment expands the title and statutory provisions of section 2S1.4 to cover these violations and makes conforming revisions.

Chapter Two, Part T—Offenses Involving Taxation

13. Proposed Amendment: Section 2T1.1 is amended in the title by inserting "; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents" immediately after "Evasion".

Section 2T1.1(a) is deleted and the following is inserted in lieu thereof:

"(a) Base Offense Level (Apply the Greater):

(1) Level from section 2T4.1 (Tax table) corresponding to the tax loss; or

(2) 6.

For purposes of this guideline, the 'tax loss' is the total amount of tax that was the object of the evasion or fraud, or that the defendant owned and willfully did not pay.".

The Commentary to section 2T1.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", by deleting "7201" and inserting in lieu thereof "7201, 7203 (other than a willful violation of 26 U.S.C. 6050I), 7206 (except 7206(2)), 7207".

The Commentary to section 2T1.1 captioned "Application Notes" is amended by deleting Application Note 1, and by renumbering Notes 2, 3, 4, 5, and 6 as Notes 1, 2, 3, 4, and 5, respectively.

The Commentary to section 2T1.1 captioned "Application Notes" is amended in Note 1 (formerly Note 2) by deleting "the taxpayer evaded or attempted to evade" and inserting in lieu thereof "was the object of the evasion or fraud, or that the defendant owned and willfully did not pay", and by inserting the following at the end:

"In typical circumstances, tax loss can be calculated as indicated in the following examples:

If the offense involved improperly claiming a deduction (i.e., an item that reduces the amount of taxable income) or an exemption, or causing another to improperly claim a deduction or exemption, the tax loss is the amount of the improper deduction or exemption multiplied by the applicable tax rate(s).

If the offense involved improperly claiming a tax credit (i.e., an item that reduces the amount of tax directly), the tax loss is the amount of the improper tax credit.

If the offense involved filing a return in which gross income was underreported, there shall be a rebuttable presumption that the tax loss is equal to the underreported income multipled by the applicable tax rate(s).

If the offense involved failing to file a tax return, there shall be a rebuttable presumption that the tax loss is the gross income, minus the applicable amount for personal exemption and the amount of the applicable standard deduction, multiplied by the applicable tax rate(s).

If the offense involved improperly claiming a deduction designed to provide a basis for tax evasion or tax fraud in the future, there shall be a rebuttable presumption that the tax loss is the amount of the deduction multipled by the applicable tax rate for the tax year for which the return was filed.".

The Commentary to section 2T1.1 captioned "Background" is amended in the first paragraph by deleting "evaded" and inserting in lieu thereof "loss", by deleting "evasion" the first time it appears and inserting in lieu thereof "tax loss", and by inserting "or tax fraud" immediately before "increases,".

The Commentary to section 2T1.1 captioned "Background" is amended in the fourth paragraph by deleting the first two sentences, and in the fifth paragraph by deleting the last sentence.

The Commentary to section 2T1.1 captioned "Background" is amended in the sixth paragraph by inserting "and tax fraud" immediately following "tax evasion", by inserting "or fraud" immediately following "the evasion", and by deleting the last sentence.

Sections 2T1.2 and 2T1.3 are deleted in their entirety.

Section 2T1.4(a) is amended by deleting "section 2T1.3" and by inserting in lieu thereof "Section 2T1.1".

Section 2T1.4(b)(1) is amended by inserting "(A)" immediately following "If", and by inserting "or (B) the defendant was in the business of preparing or assisting in the preparation of tax returns," immediately before "increase by 2 levels.".

Section 2T1.4(b)(3) is deleted.

The Commentary to section 2T1.4 captioned "Application Notes" is amended by deleting Notes 3 and 4, by renumbering Application Notes 1 and 2 as 2 and 3, respectively; and by inserting the following as Note 1:

"1. For the general principles underlying the determination of tax loss, see Application Note 1 of the Commentary to section 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents). In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate 'tax loss.' ".

The Commentary to section 2T1.4 captioned "Application Notes" is amended in Application Note 2 (formerly note 1) by inserting "has two prongs. The first prong" immediately after "(b)(1)", and by inserting the following as the last sentence:

"The second prong applies to persons who regularly act as tax preparers or advisers for profit; if an enhancement from this prong is applied, do not apply Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to Section 2T1.4 captioned "Background" is amended by inserting "and those who make a business of promoting tax fraud" immediately following "advisers"

and by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.1".

Section 2T1.5 is deleted in its entirety.

Section 2T1.9(a)(1) is amended by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.4".

Section 2T1.9(b)(1) is amended by inserting "to impair, impede, or defeat the ascertainment, computation, assessment, or collection of revenue" immediately following "violence".

Section 2T1.9(b)(2) is amended by deleting "impede or impair the Internal Revenue Service in the assessment and" and inserting in lieu thereof "impair, impede, or defeat the ascertainment, computations, assessment, or" and by inserting the following as the last sentence:

"Do not, however, apply this adjustment if an adjustment from section 2T1.4(b)(1) is applied.".

The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.4", and by inserting the following additional note:

"4. Subsection (b)(2) provides an enhancement where the conduct was intended to encourage persons, other than the participants directly involved in the offense, to violate the tax laws (e.g., an offense involving a 'tax protest' group that encourages persons to violate the tax laws, or an offense involving the marketing of fraudulent tax shelters.".

Reason for Amendment: This amendment consolidates and clarifies the guidelines in chapter Two, part T, subpart 1, thereby eliminating the confusion that has arisen in some cases regarding which guideline section was applicable. In addition, this amendment eliminates the anomaly of using actual tax loss only in some cases, and using an amount that differed from actual tax loss in other cases. Furthermore, this amendment clarifies the conditions under which the specific offense characteristics of section 2T1.9 are applicable and clarifies the relationship between the loss calculation under section 2T1.4 and section 2T1.9.

14. Proposed Amendment: Section 2T1.1(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if"

Section 2T1.2(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if".

Section 2T1.3(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if".

Section 2T1.4(b)(1) is amended by inserting the following additional subdivision:

"(4) If the defendant aided, assisted, procured, counseled, or advised the filing of a return which failed to report or to correctly identify the source of income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.".

Reason for Amendment: This amendment provides an enhancement, including a minimum base offense level of 17, for tax violations that involve or are related to violations of the controlled substance laws. This amendment would treat such offenses in a manner similar to money laundering offenses. Under the proposed amendment to section 2T1.4, persons who procure or counsel tax fraud that involves unlawful controlled substance offenses or other criminal activity would be treated the same as those who commit such offenses directly.

Chapter Three—Adjustments, Part A—Victim-Related Adjustments

15. Proposed Amendment: Chapter 3, part A is amended by inserting the following additional guideline and accompanying commentary:

"Section 3A1.4. Commission of Terrorist Crimes

If the defendant committed a felony that involved, or was intended to promote international terrorism, whether committed within or outside the United States, increase by 3 levels.

Commentary

Application Note:

1. If the offense constituted a severe threat to national security, or caused death or bodily injury not taken into account in the offense guideline, an upward departure may be warranted.".

Reason for Amendment: This section would provide an enhancement for terrorist actions involving offenses such as explosives, kidnapping, weapons offenses, passport violations, murder, robbery, and other felony offenses that are committed to promote international terrorism.

Chapter Three, Part B—Role in the Offense

Chapter Two, Part D—Offenses Involving Drugs

16(A). Proposed Amendment: The Introductory Commentary to chapter Three, part B is amended by deleting the third sentence of the first paragraph.

The commentary to section 3B1.2 is amended by inserting the following additional note:

"(4) If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant ordinarily is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of 14 under section 2D2.1) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of 6 under section 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.".

Reason for Amendment: This amendment clarifies a situation in which a defendant is not ordinarily eligible for a reduction under section 3B1.2 (Mitigating Role), and moves existing language from the Introductory Commentary of chapter Three, part B, to the Commentary in section 3B1.2.

(B). Proposed Amendment. The Commentary to section 3B1.1 is amended by inserting the following additional note:

"4. When a defendant, who otherwise would merit a mitigating role reduction under

section 3B1.2 (Mitigating Role), exercised limited supervision over a limited number of participants with equal or lesser roles, do not apply an adjustment from this section. For example, an increase in offense level under this section would not be appropriate for a defendant whose only function was to offload a single large shipment of marijuana, and who supervised other offloaders of that shipment. Instead, consider such circumstances in determining the appropriate reduction under section 3B1.2 (Mitigating Role). See also Application Note 4 of the Commentary to section 3B1.2 (Mitigating Role).".

The Commentary to section 3B1.2 is amended by inserting the following additional note:

"4. When a defendant who otherwise would merit a mitigating role reduction under section 3B1.2 (Mitigating Role), supervises a number of participants with equal or lesser roles, a lesser reduction than otherwise appropriate ordinarily is warranted. For example, in the case of a defendant who would have qualified for a minimal role adjustment but for his supervision of other participants, an adjustment for minor role, rather the minimal role, would be appropriate.".

Reason for Amendment: This amendment clarifies that a defendant who otherwise merits a mitigating role, and who supervises a limited number of participants of equal or lesser roles, is not subject to an aggravating role enhancement. Instead, such circumstances may be considered in determining whether a mitigating role reduction is appropriate under section 3B1.2.

17(A). Proposed Amendment: The Introductory Commentary to chapter three, part B is amended by deleting the first sentence of the second paragraph and inserting in lieu thereof:

"In the case of a criminal activity involving more than one participant, section 3B1.1 or section 3B1.2 may apply. When a criminal activity involves only one participant, or only participants of roughly equivalent culpability, neither section 3B1.1 nor section 3B1.2 will apply.'.

Section 3B1.1 is amended by deleting "follows:" and inserting in lieu thereof "follows (Apply the greatest):".

Section 3B1.1(a) is amended by deleting "five or more participants, or was otherwise extensive" and by inserting in lieu thereof "at least four other participants".

Section 3B1.1(b) is amended by deleting "(but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive" and inserting in lieu thereof "of at least four other participants in a criminal activity".

Section 3B1.1(c) is amended by deleting "other than described in (a) or (b)" and inserting in lieu thereof "that involved at least one other participant".

The Commentary to section 3B1.1 captioned "Application Notes" is amended in Note 1 by deleting the second sentence and inserting in lieu thereof the following additional paragraphs:

"In addition, for the purposes of this guideline, a participant ordinarily includes any person who plays the role of a participant, even if such person is not actually criminally responsible for the offense (e.g., if two persons were recruited to assist in transporting marihuana, they would be deemed participants even if they were undercover law enforcement agents and, thus, not criminally responsible for the offense). However, if an undercover agent were recruited to assist in transporting marihuana and that agent recruited three other undercover agents, only the first undercover agent would be counted as a participant.

Furthermore, for purposes of this guideline, a participant includes any person recruited to play a [(significant)] role in the offense, even though their lack of awareness that an offense was being committed is a bar to their criminal liability (e.g., a person recruited to drive the getaway car from a robbery who is unaware that a robbery is to be committed; or a person expressly hired to collect money for charitable purposes, who is unaware that a fraud is being perpetrated). Persons such as postal employees, messengers, or taxi drivers who are performing their normal duties, and are not otherwise criminally responsible for their conduct, are not included under this paragraph.".

The Commentary to section 3B1.1 captioned "Application Notes" is amended by deleting Note 2.

Section 3B1.4 is deleted in its entirety.

Reason for Amendment: This amendment clarifies the definition of participant to inlcude the defendant and other persons who are criminally responsible. "Participant" also includes, in most cases, law enforcement officers, and those who are not criminally responsible for their conduct in the offense but who play a role in furthering the offense, even if unwitting. The amendment also deletes section 3B1.4, which is untitled, and is inconsistent with the remainder of the guideline format. The substance of the Commentary to section 3B1.4 is more appropriately placed in the Introductory Commentary to this part.

Illustration of Chapter Three, Part B, as amended by Proposed Amendment 17(A)

Part B—Role in the Offense

Introductory Commentary

* * * * *

[When an offense is committed by more than one participant, section 3B1.1 or section 3B1.2 (or neither) may apply.] *In the case of a criminal activity involving more than one participant, section 3B1.1 or section 3B1.2 may apply. When a criminal activity involves only one participant, or only participants of roughly equivalent culpability, neither section 3B1.1 or section 3B1.2 will apply.* Section 3B1.3 may apply to offenses committed by any number of participants.

Section 3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as [follows:] *follows (Apply the greatest):*

(a) If the defendant was an organizer or leader of a criminal activity that involved [five or more participants or was otherwise extensive] *at least four other participants,* increase by 4 levels.

(b) If the defendant was a manager or supervisor [(but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive] *of at least four other participants in a criminal activity,* increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal [other than described in (a) or (b)] *that involved at least one other participant,* increase by 2 levels.

Commentary

Application Notes:

1. A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. [A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.]

In addition, for the purposes of this guideline, a participant ordinarily includes any person who plays the role of a participant, even if such person is not actually criminally responsible for the offense (e.g., if two persons were recruited to assist in transporting marihuana, they would be deemed participants even if they were undercover law enforcement agents and, thus, not criminally responsible for the offense). However, if an undercover agent were recruited to assist in transporting marihuana and that agent recruited three other undercover agents, only the first undercover agent would be counted as a participant.

Furthermore, for purposes of this guideline, a participant includes any person recruited to play a [(significant)] role in the offense, even though their lack of awareness that an offense was being committed is a bar to their criminal liability (e.g., a person recruited to drive the getaway car from a robbery who is unaware that a robbery is to be committed; or a person expressly hired to collect money for charitable purposes, who is unaware that a fraud is being perpetrated). Persons such as postal employees, messengers, or taxi drivers who are performing their normal duties, and are not otherwise criminally responsible for their conduct, are not included under this paragraph.

[2. In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved

only three participants but used the unknowing services of many outsiders could be considered extensive.]

* * * * *

[Section 3B1.4. In any other case, no adjustment is made for role in the offense.

Commentary

Many offenses are committed by a single individual or by individuals of roughly equal culpability so that none of them will receive an adjustment under this part. In addition, some participants in a criminal organization may receive increases under section 3B1.1 (Aggravating Role) while others receive decreases under section 3B1.2 (Mitigating Role) and still other participants receive no adjustment.]

(B). Proposed Amendment to section 3B1.1 (Aggravating Role): The Commentary to section 3B1.1, captioned "Application Notes," is amended in Note 1 by inserting the following additional sentence as the first sentence:

"This adjustment applies only when the offense is committed by more than one participant.".

Reason for Amendment: This amendment clarifies that this adjustment is restricted to cases in which the defendant participates in the commission of the offense with at least one other person who is also criminally responsible for the commission of the offense.

18(A). Proposed Amendment: Section 3B1.2 is amended by deleting "In cases falling between (a) and (b), decrease by 3 levels.".

The Commentary to section 3B1.2 is deleted in its entirety and the following notes are inserted in lieu thereof:

"1. This section applies only in the case of criminal activity involving more than one participant. "Participant" is defined in Note 1 of the Commentary to section 3B1.1.

[[2. No mitigating role adjustment under this section shall be applied to a defendant who, in connection with the offense, threatened the use of force, possessed a dangerous weapon, or caused another person to threaten the use of force or possess a dangerous weapon.]]

3. Subsection (a) (Minimal Role) applies to a defendant who is [[plainly among the least culpable of the participants in the criminal activity]] [[plainly among the least culpable when compared to all other participants who typically participate in the particular type of criminal activity]]. [[It is intended that the downward adjustment for a minimal participant be restricted to a narrow group of defendants whose function in the criminal activity and whose culpability for the offense, relative to that of other participants, indicates that such defendants are plainly among the least culpable.]]

To receive a reduction under subsection (a) (Minimal Role), the defendant [[ordinarily]] shall have:

(a) Only performed unskilled or unsophisticated tasks;

(b) No proprietary interest in the criminal activity, and received no benefit from the criminal activity, other than a [[fixed-fee]] payment that is a small amount both absolutely and in comparison to the expected profit of those who have employed the defendant.

(c) No [[significant]] decision-making authority in the criminal activity;

[[(d) Participated in the criminal activity [[on no more than one occasion]] [[for no more than a short period of time]]; and

[[(e) No more than limited knowledge of the scope and structure of the criminal activity and of the criminal conduct of the more culpable participants.]]

[[Frequently, such defendants will have little or no knowledge of the scope and structure of the criminal activity or of the activities of the more culpable participants.]]

4. In a controlled substance trafficking offense (any offense for which the offense level is determined under section 2D1.1)—

(a) "No proprietary interest" excludes (1) any defendant who owned any portion of the controlled substance; and (2) any defendant who financed any aspect of the importation, manufacture, cultivation, transportation, or distribution of the controlled substance;

(b) "No [[significant]] decision-making authority" excludes (1) any defendant who sold, negotiated the sale of, or determined the terms of a sale of the controlled substance, (2) any defendant who exercised [[significant]] decision-making authority with respect to the importation, manufacture, cultivation, transportation, or distribution of the controlled substance, and (3) and defendant who exercised control of the controlled substance for a significant period of time, such that the defendant [[had the ability to control]] [[was essential to]] the success of the criminal activity. In contrast, "no [[significant]] decision-making authority in the criminal activity" includes any defendant who did not exercise control over the controlled substance for any significant period of time, such that the defendant [[had the ability to control]] [[was essential to]] the success of the criminal activity. For example, a defendant who merely offloaded one ship, or permitted use of a residence in furtherance of the crinimal activity did not exercise control over the controlled substance for any significant period of time.

5. Subsection (b) (Minor Role) applies to a defendant who is [[significantly less culpable than a defendant who carried out the same criminal activity without assistance]] [[substantially less culpable when compared to all other participants who typically participate in the particular type of criminal activity]], but who is more culpable than a minimal role participant. This subsection may apply to a defendant who meets some but not all of the criteria for a minimal role reduction. [[For example, an adjustment for minor role, rathter than minimal role, may be appropriate for a defendant who otherwise qualifies for a minimal role adjustment, but exercised sufficient control over controlled substances being transported so as not to merit a minimal role adjustment.]] Furthermore, subsection (b) may apply to a defendant who otherwise meets the criteria for a minimal role adjustment but for the exercise of limited supervision over a limited number of participants who also had minimal roles in the offense.

6. Consistent with the structure of the guidelines, the defendant bears the burden of persuasion in establishing a mitigating role reduction. In determining whether a defendant merits a mitigating role adjustment, the court should base its determination of role on the totality of the circumstances. Among the factors to be considered are the apparent sophistication or lack of sophistication of the defendant or the conduct, evidence concerning the existence of similar criminal conduct by the defendant, evidence of wealth derived from unknown or illegal sources, and the quantity of controlled substances with which the defendant was personally involved.

[[7. In a controlled substance trafficking offense (any offense covered under section 2D1.1), the criminal activity to be considered is the trafficking in the controlled substance, not merely the transportation of the controlled substance from one place to another. For example, in the case of a person hired to drive a truck containing marihuana from one city to another, the defendant's role is to be considered in relation to the criminal activity of drug trafficking. Therefore, a transporter may, if otherwise qualified, receive a reduction for a mitigating role.]]".

Reason for Amendment: This amendment more clearly specifies the factors that the court should consider when determining whether a defendant receives a mitigating role adjustment. This amendment also clarifies that couriers and mules by virtue of the function they play in a criminal activity are either presumed to be eligible nor ineligible for a mitigating role reduction. Such defendants must otherwise meet the criteria for a mitigating role reduction before they are eligible for such adjustment.

Additional Issues for Comment: The Commission requests comment on the following questions:

(1) Whether mitigating role adjustments should apply in cases in which the defendant is substantially less culpable than other defendants in the same case, or whether the adjustments should apply only when the defendant is substantially less culpable than individuals, whether or not defendants, who typically participate in similar criminal conduct?

(2) Whether defendants who perform certain functions in a drug activity may be eligible for a mitigating role adjustment under section 3B1.2 solely by virtue of the function performed? For example, it might be suggested in commentary to section 3B1.2 that defendants who perform the functions of offloader, driver, transporter, or lookout, are automatically eligible for a minor or minimal role adjustment, or are eligible for such an adjustment if certain other

factors are present. The Commission requests comment on how it should identify such participants and how to treat a defendant who performs more than one function in the offense.

(3) Conversely, whether defendants who perform certain functions in a drug activity are, by virtue of the importance of the function, disqualified from receiving a mitigating role adjustment, notwithstanding the fact that the defendant may have received a substantially smaller amount of money for his participation than other participants and may have exercised little decison-making authority in the criminal activity? For example, some argue that because one who transports controlled substances performs a crucial function for the drug trafficking ring, that person should not receive a mitigating role adjustment, no matter how little compensation the individual received, for an offense level based only on the quantity of controlled substances transported.

(4) What factors should be considered in determining whether to give a mitigating role reduction; and whether the list of factors provided in proposed application note 1 is adequate or overinclusive?

(5) Whether a defendant who otherwise merits a mitigating role adjustment under section 3B1.2 should be prevented from receiving that adjustment where the defendant has not been held responsible for a greater quantity of controlled substances than the defendant actually trafficked or aided in the trafficking? The Commission also requests comment on whether such a restriction should apply only to defendants whose sole function is that of a courier or mule.

(6) Conversely, whether a defendant who otherwise does not merit a mitigating role reduction under section 3B1.2 solely because he sold small quantities of certain controlled substances should be permitted to receive that mitigating role adjustment where the defendant has been held responsible for a greater quantity of controlled substances than the defendant actually trafficked or aided in trafficking?

(B). Proposed Amendment to section 3B1.2 (Mitigating Role): The Commentary to Section 3B1.2 captioned "Application Notes" is amended by inserting the following additional note:

"4. In addition to a downward adjustment for a minimal participant, a downward departure may be warranted on the ground that minimal participation exists to a degree not contemplated by the guidelines. For example, a downward departure, in addition to a downward adjustment for a minimal participant, may be warranted in a case where the offense level as applied to a defendant has been extraordinarily magnified by a circumstance that bears little relation to the defendant's role in the offense.".

Reason for Amendment: This amendment provides expressly that a court may depart below the applicable guideline range when it determines that a defendant's minimal participation exists to a degree not taken into consideration by the Sentencing Commission.

19. Proposed Amendment: Section 2D1.1(b) is amended by inserting the following additional subdivisions:

[[Option 1:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but if the offense involved—

(A) Only marijuana, hashish, hashish oil, a Schedule I or II Depressant, or a Schedule III, IV, or V substance, in no event shall the offense level be greater than level [[16–26]]; or

(B) Any other controlled substance, in no event shall the offense level be greater than level [[20–32]].

(4) If the defendant was a minor participant, decrease by 2 levels, but if the offense involved—

(A) Only marijuana, hashish, hashish oil, a Schedule I or II Depressant, or a Schedule III, IV, or V substance, in no event shall the offense level be greater than level [[22–28]]; or

(B) Any other controlled substance, in no event shall the offense level be greater than level [[26–34]].".]]

[[Option 2:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but in no event shall the offense level be greater than level [[16–32]].

(4) If the defendant was a minor participant, decrease by 2 levels, but in no event shall the offense level be greater than level [[22–34]]."]]

[[Option 3:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but in no event shall the offense level be greater than level [[16–32]]."]]

[[Options 1 and 2:

The Commentary to section 2D1.1 captioned "Application Notes" is amended by adding the following additional note:

"15. Do not apply an adjustment from section 3B1.2 (Mitigating Role) if the offense level is adjusted under subsection (b)(3) or (b)(4).".]]

[[Option 3:

The Commentary to section 2D1.1 captioned "Application Notes" is amended by adding the following additional note:

"15. Do not apply an adjustment from section 3B1.2 (Mitigating Role) is the offense level is adjusted under subsection (b)(3).".]]

Reason for Amendment: This amendment limits the offense level to which a minor or minimal participant in drug cases is exposed. Some argue that, with regard to extremely large quantities of drugs, using the weight of the substance to determine the offense level of a minor or minimal participant overstates the culpability of that participant. Some also argue that the current 4-level reduction may be inadequate to counter the impact of a quantity-driven offense level.

Additional Issues for Comment: The Commission requests comment on this amendment and on possible variations of the amendment, as suggested by the following questions:

(1)(a) Should the same offense level cap apply to minor and minimal role offenders?

(b) Should the same offense level cap apply to marijuana (and similar substances) as applies to other controlled substances (such as heroin, cocaine, and crack cocaine)? On what criteria should the Commission make a distinction between types of substances for purposes of determining an appropriate offense level cap?

(2) Should the offense level cap limit the sentence imposed (e.g., no greater than [[120]] months) or limit the guideline offense level to be applied (e.g., no greater than level [[32]])?

(3) With regard to mitigating role participants, should one offense level cap be selected for a particular substance (e.g., a level 32 for cocaine offenses) or should two offense level caps be available, with the cap to be determined based on the mandatory minimum penalty to which the defendant is subject as a result of the quantity of drugs with which the defendant is involved? For example, with two offense level caps, a defendant involved with a quantity of less than 5 kilograms of cocaine could be subject to an offense level cap of 26 (or a sentencing cap of 60 months) and a defendant involved with a quantity of 5 or more kilograms of cocaine could be subject to an offense level cap of 32 (or a sentencing cap of 120 months)? Would the use of two such caps create an undesirable "cliff" effect? For example, a defendant involved with 4.9 kilograms of cocaine might be subject to a 5-year sentencing cap, whereas a defendant involved with 5 kilograms of cocaine would be subject to a 10-year cap: a 5-year difference in sentence may be based on a difference in quantity of 100 grams of cocaine.

(4) To what extent do mandatory minimum sentencing statutes, on which the Commission has set its base offense levels for drug offenses, further influence the Commission's consideration of these possible amendments? Some argue that congressional intent is clearer

concerning the determination of the amount of drugs that triggers a mandatory sentence for substantive offenses than it is with regard to this same determination in the context of conspiratorial offenses. Accordingly, should there be different offense level caps, depending on whether the defendant's accountability for a quantity of drugs is based on conspiratorial or substantive conduct? How could such a distinction be articulated?

(5) Should an amendment capping the offense level of mitigating role offenders be available only to defendants with a Criminal History Category of I? Category I or II? Or, should it be available only to Category I or II defendants who have no prior drug trafficking conviction?

(6) Should an alternative to an offense level cap be considered such that at high base offense levels the reduction for minimal role is greater than 4 levels, and for minor role, greater than 2 levels?

(7) Should this amendment modify section 2D1.1 (Manufacturing, Importing, Exporting, or Trafficking) or section 3B1.2 (Mitigating Role)?

20. Proposed Amendment: [[Option 1: Section 2D1.8 is deleted in its entirety. The Commentary to section 2D1.1 captioned "Statutory Provisions" is amended by inserting "856," before "960(a),".]]

[[Option 2: Section 2D1.8(a) is deleted and the following section inserted in lieu thereof:

"(a) Base Offense Level

(1) The offense level from the table in section 2D1.1 applicable to the underlying controlled substance offense, except as provided below.

(2) If the defendant had no role in the underlying controlled substance offense other than renting or allowing use of a premises, the offense level shall be 4 levels less than the offense from section 2D1.1 applicable to the underlying controlled substance offense, but not greater than level [[16]].".

The Commentary to section 2D1.8 captioned "Application Note" is amended by deleting Note 1 and inserting the following note in lieu thereof:

"1. Do not apply an additional adjustment under section 3B1.2 (Mitigating Role) if the offense level is determined under subsection (a)(2).".]]

[[Option 3: Section 2D1.8(a) is deleted and the following section inserted in lieu thereof:

"(a) Base Offense Level (Apply the greatest):

(1) The offense level from the table in section 2D1.1 applicable to the underlying controlled substance offense;

(2) [[16]] .".]]

Reason for Amendment: Currently, this guideline, which provides for a base offense level of 16 without regard to the quantity of drugs involved in the offense, can produce what appear to be anomalous results. A defendant who allows less than 250 grams of marijuana to be sold from his apartment is assigned a base offense level of 16 if convicted under 21 U.S.C. 856; if he had been convicted of actual distribution, he would have been assigned a base offense level of 6. In contrast, a defendant who allowed the use of a premises to sell 300 kilograms of heroin would also be assigned an offense level of 16 under the current guideline. Each option determines the offense level by reference to section 2D1.1. Option 1 provides no maximum or minimum offense level. Option 2 provides a maximum offense level 16 where the defendant has no role other than to rent or allow the use of a premises. Option 3 provides a minimum offense level 16 for every case.

Section 3C1.2. Reckless Endangerment During Flight

21. Issue for Comment: The sentencing Commission requests comment on whether section 3C1.2 adequately accounts for and punishes the full range of behavior to which it is applicable. More specifically, should the guideline incorporate a floor offense level for creating a substantial risk of death or serious bodily injury (e.g., a level from 12 to 15), with additional enhancements (e.g., 2 levels each) for physical injury, serious physical injury, or if death results? Or, should a cross reference to another guideline be used in lieu of, or in conjunction with, the above?

Chapter Three, Part D—Multiple Counts

22. Issue for Comment: The Commission seeks comment regarding amendment of the multiple count rules. In certain situations, multiple counts of conviction do not result in an increase in guideline range; for example, when one count embodies conduct treated as a specific offense characteristic, or adjustment to, the guideline applicable to the other count, or when there is a difference of nine or more levels between the counts. The Commission seeks comment as to the current structure and the court's ability to choose a point in the guideline range is adequate in these cases, or where section 3D1.2 should be modified and, if so, in what manner.

For example, section 3D1.4 instructs the user to disregard any group of closely related counts that is nine or more levels less serious than the group with the highest offense level. Thus, when counts of conviction include serious offenses and significantly less serious ones, the lesser ones do not contribute toward the determination of the guideline range. For example, a drug count with a high offense level and a theft count relating to a relatively small theft would result in a guideline range no different from the range that would result from the drug count alone if the two offenses were nine or more levels apart.

Another example concerns the tax evasion guideline, section 2T1.1(b)(1). This guideline includes a specific offense characteristic that provides that, if the defendant failed to report or to correctly identify the source of income exceeding $10,000 from criminal activity, a two-level increase results. Assuming there were also a count of conviction for a drug offense, the grouping rule cited above operate to group the tax evasion and drug count. The offense level for the count of conviction relating to the drug offenses is likely to exceed the offense for the tax evasion count. Therefore, the offense level for the group of closely related counts would be that for the drug offense.

Chapter Three, Part E—Acceptance of Responsibility

23. Proposed Amendment: [[Option 1: Section 3E1.1(a) is amended by deleting "his criminal conduct" and inserting in lieu thereof "the offense of conviction and relevant conduct".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 1(c) by deleting "related" and inserting in lieu thereof "relevant".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 3 by deleting "and related conduct" and inserting in lieu thereof "of conviction and relevant conduct".

The Background to section 3E1.1 is amended by deleting "and related conduct" and inserting in lieu thereof "of conviction and relevant conduct".]]

[[Option 2: Section 3E1.1(a) is amended by inserting the following immediately before the period at the end of the sentence "if the offense level determined above is level 29 or less; and 3 levels if the offense level determined above is level 30 or greater".]]

[[Option 3: Subsections (a), (b), and (c) of section 3E1.1 are deleted and the following is inserted in lieu thereof:

"(a) If the defendant—

(1) Is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, or

(2) Truthfully admits his involvement in the offense of conviction prior to adjudication of guilt, while exercising his constitutional right to a trial to assert and preserve issues not related to factual guilt,

reduce the offense level by 2 levels

(b) If the defendant—

[[(1) Truthfully admits involvement in the offense of conviction and relevant conduct and,]]

(2) Demonstrates full acceptance of responsibility by taking timely affirmative steps such as:

[[(a) Truthful admission of involvement in the offense of conviction and relevant conduct]]

(a) Voluntary payment of restitution prior to adjudication of guilt;

(b) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(c) Voluntary and full cooperation with authorities in the prosecution and sentencing of the offense;

(d) Voluntary resignation from the office or position held during the commission of the offense; or

(e) Voluntary surrender to authorities promptly after the commission of offense;

reduce the offense level by one level.

(c) If section 3E1.1(a) and (b) apply, reduce the offense level by 3 levels.".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by deleting Notes 1, 2, and 3 and inserting in lieu thereof:

"1. Section 3E1.1 provides for a 1, 2, or 3 level reduction. The 3-level reduction is intended for the defendant who enters a plea in a timely fashion, admits his involvement in the offense, and demonstrates additional affirmative acts of acceptance of responsibility.

2. Section 3E1.1(a)(2) is intended to apply in the rare situation where the defendant admits his involvement in the offense of conviction prior to adjudication of guilty, but exercises his constitutional right to trial for reasons unrelated of contesting factual guilt (e.g., [[to challenge admissibility of evidence necessary to prove guilt,]] to challenge the constitutionality of a statute or challenge the applicability of a statute to his conduct, to assert conduct which would demonstrate that the defendant should not be held responsible for the offense (self-defense motive) to demonstrate the absence of the intent to commit the offense or the absence of knowledge that the conduct would constitute the offense at the time that the offense was committed).

3. The 2- or 3-level reduction is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt. However, such a defendant could qualify for the 1-level reduction as set forth in section 3E1.1(b).".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in the second sentence of Note 4 by inserting "(b) (1) and (2)" immediately following "3E1.1".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by renumbering Note 5 as 6, and by inserting the following as Note 5:

"5. In determining whether a defendant demonstrates 'voluntary and full cooperation,' as used in section (b)(2)(c), appropriate considerations include: (a) the defendant's cooperation with the government that is insufficient to merit a motion by the government for a substantial assistance departure, and (b) the defendant's cooperation with the court and with the pre-trial and probation officers in the execution of their duties.".]]

[[Option 4: Subsections (a), (b), and (c) of section 3E1.1 are deleted and the following is inserted in lieu thereof:

"(a) If more than one of the following applies, use the greatest:

(1) If the defendant clearly demonstrates a recognition and affirmative acceptance of responsibility for his offense in a timely manner, decrease the offense level by 3 levels; or

(2) If the defendant is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, decrease the offense level by 2 levels[[; or

(3) If the defendant is convicted upon the plea of guilty or nolo contendere after the opening of the government's case at trial, decrease the offense levely by 1 level]].

(b) A defendant may be given consideration under subsection (a)(1) without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury, or the practical certainty of conviction at trial. Entry of a plea of guilty prior to the opening of the government's case at trial is not in itself sufficient to warrant a reduction under subsection (a)(1).".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 1 by deleting "this provision" and inserting in lieu thereof "an adjustment under section 3E1.1(a)(1)", and by deleting "related" and inserting in lieu thereof "relevant".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 2 by deleting "This adjustment" and inserting in lieu thereof "section 3E1.1(a) (1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 3 by deleting "related" and inserting in lieu thereof "relevant", and by deleting "this section" and inserting in lieu thereof "section 3E1.1(a)(1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 4 by inserting immediately before the period at the end of the first sentence "under subsection (a)(1)", and in the second sentence by deleting "3E1.1" and inserting in lieu thereof "3E1.1(a)(1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by renumbering Note 5 as Note 6 and by inserting the following additional note as Note 5:

"5. Subsection (a)(2) applies to a defendant who is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial (including a conditional plea under Rule 11(a)(2) of the Rules of Criminal Procedure), but does not qualify for a reduction under subsection (a)(1). Such defendants have ensured the certainty of their just punishment in a timely manner and, therefore, are appropriately provided a 2-level reduction.

[[Subsection (a)(3) applies to a defendant who is convicted upon a plea of guilty or nolo contendere, but does not qualify for a reduction under either subsection (a) (1) or (2). Such defendants have ensured the certainty of their just punishment and, therefore, appropriately are provided a 1 level reduction.".]]

The Commentary to section 3E1.1 captioned "Background" is amended by deleting "related" and inserting in lieu thereof "relevant", by inserting "under subsection (a)(1)" immediately following "lower offense level" and by inserting the following additional sentence at the end:

"Lesser reductions are provided under subsection (a)(2) [[or (3)]] to a defendant who, although not qualifying for a reduction under subsection (a)(1), nevertheless has ensured the certainty of his just punishment by entering a plea of guilty or nolo contendere.".

Conforming Amendment: Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

The Commentary to section 6B1.2 is amended in the first paragraph by deleting: "This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed. R. Crim. P. A judge" and inserting in lieu thereof "The court", and by inserting, immediately before "This requirement", the following:

"A defendant who enters a plea of guilty or nolo contendere prior to the opening of the government's case at trial ensures a reduction in offense level by 2 levels under section 3E1.1 (Acceptance of Responsibility). Further reductions in sentences due to plea agreements will tend to undermine the system of sentencing guidelines and should be avoided.".]]

Reason for Amendment: Option 1 provides expressly that a defendant be required to accept responsibility for the offense of conviction and all relevant conduct. With respect to Option 1, the Commission solicits comment on

whether "the offense of conviction and all relevant conduct" is the appropriate scope of consideration for acceptance of responsibility; whether the scope should be broader, i.e., the offense of conviction and all related conduct (all conduct connected with the conduct constituting the offense of conviction whether or not it is within the parameters of relevant conduct); or whether the scope should be narrower, i.e., restricted to the offense of conviction.

Option 2 provides a greater reduction for acceptance of responsibility for cases with offense levels of 30 or greater. The Commission solicits comments on the appropriateness of providing a greater reduction at higher offense levels, and if so, whether the three level reduction should begin at offense level 30 or at a lower or higher offense level.

Option 3 provides a broader range of adjustments for acceptance of responsibility. Under this option, a defendant receives a two-level reduction under subsection (a) if he is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, or truthfully admits his involvement in the offense of conviction prior to adjudication of guilt, while exercising his constitutional right to a trial to assert and preserve issues not related to factual guilt. A separate, additional, one-level reduction is provided under subsection (b) to a defendant who takes additional steps demonstrative of full acceptance of responsibility. Because the decrease under subsection (b) is separate, a defendant who denies his guilt and is convicted by trial could nevertheless achieve a one-level reduction under subsection (b) of this option by subsequently demonstrating affirmative acceptance of responsibility.

Option 4 is similar to Option 3, but has certain differences. As in Option 3, a defendant who is convicted upon a plea of guilty or nolo contendere entered prior to the government's case at trial receives at least a two-level reduction. Similarly, if such defendant takes additional steps to accept responsibility, a three-level reduction is provided. Under Option 4, a defendant who goes to trial may be eligible for the full reduction under very exceptional circumstances (e.g., a defendant who admits and accepts responsibility for his conduct, but goes to trial to challenge the applicability of the statute to his conduct). Unlike Option 3, however, a defendant who goes to trial is convicted, and later admits his guilt at sentencing would not be eligible for a partial reduction under Option 4. Bracketed language within Option 4 is included to solicit comment on whether if this option is adopted it should include a partial (one-level) reduction for a defendant who changes his plea after the opening of the government's case at trial.

Section 4A1.1. Criminal History Category

24. Proposed Amendment: Section 4A1.1(f) is deleted as follows:

"(f) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.",

and the following is inserted in lieu thereof:

"(f) Add 1 point for each of the following:

"(i) Each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence. Provided, that (1) this subparagraph does not apply where the sentences are considered related because the offenses occurred on the same occasion; and (2) not more than 3 points may be added under this subparagraph; and

(ii) Each prior sentence, or each set of consolidated prior sentences, counted under (a) for which the defendant actually served at least [[five]] years of imprisonment prior to initial release.".

Reason for Amendment: This amendment further distinguishes the weight given to serious prior offenses by adding an additional point for sentences on which the defendant actually served five or more years of imprisonment.

Section 4A1.2. Definitions and Instructions for Computing Criminal History

25(A). Proposed Amendment: [[Option 1: Section 4A1.2(f) is amended by deleting ", except" and inserting in lieu thereof ". Provided,"; and by deleting "from juvenile court" and inserting in lieu thereof "for an offense committed prior to the defendant's eighteenth birthday".

Section 4A1.2(j) is deleted as follows:

"(j) Expunged Convictions

Sentences for expunged convictions are not counted, but may be considered under section 4A1.3 (Adequacy of Criminal History Category).",

and the following inserted in lieu thereof:

"(j) Reversed, Vacated, Annulled, Set Aside, Pardoned, or Expunged Convictions

(1) A sentence resulting from a conviction that has been reversed is not counted. A sentence resulting from a conviction that has been vacated, set aside, annulled, or expunged or for which the defendant has been pardoned, is not counted if such action was based on a determination that the conviction was legally defective or on evidence pertaining to the defendant's innocence.

(2) A number of jurisdictions have various procedures pursuant to which a defendant's conviction may be vacated, 'set aside,' annulled, or ordered expunged, or a defendant may be pardoned, for reasons unrelated to innocence or legal defect (e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction). A sentence for such a conviction is counted.

(3) Provided, that any sentence resulting from a conviction or adjudication for an offense committed prior to a defendant's eighteenth birthday that has been vacated, set aside, annulled, or ordered expunged, or for which the defendant has been pardoned is not counted [[unless the defendant commenced the instant offense prior to such action]] .".

The Commentary to section 4A1.2 captioned "Application Notes" is amended by deleting Note 10 and renumbering the remaining notes accordingly.]]

[[Option 2: Section 4A1.2(f) is amended by deleting "is counted as a sentence under section 4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted" and inserting in lieu thereof:

"(e.g., a probationary disposition without entry of a conviction) [[is counted as a sentence under section 4A1.1(c) only if the defendant commenced the instant offense prior to satisfaction of the express conditions, if any, of such diversionary disposition]] [[is not counted]].

Section 4A1.2(j) is deleted as follows:

"(j) Expunged Convictions

Sentences for expunged convictions are not counted, but may be considered under section 4A1.3 (Adequacy of Criminal History Category).",

and the following is inserted in lieu thereof:

"(j) Reversed, Vacated, Annulled, Set Aside, Pardoned, or Expunged Convictions

(1) A sentence resulting from a conviction that has been reversed, vacated, set aside, annulled, or expunged, or for which the defendant has been pardoned, is not counted if such action was based upon a determination that the conviction was legally defective or on evidence pertaining to the defendant's innocence.

(2) A number of jurisdictions have various procedures pursuant to which a defendant's conviction may be vacated, set aside,

annulled, or expunged, or a defendant may be pardoned, for reasons unrelated to legal defect or innocence (e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction). A sentence resulting from such a conviction for an offense committed at age eighteen or older—

(A) Is counted if the sentence contained a term of imprisonment of [[sixty days or more]] [[more than one year and one month]] [[, or if the defendant commenced the instant offense before such action was taken]] ; and

(B) Is not counted in any other case.

(3) A sentence resulting from a conviction or adjudication for an offense committed prior to age eighteen that has been vacated, set aside, annulled, expunged, or for which the defendant has been pardoned is not counted [[unless the defendant commenced the instant offense before such action was taken]] "]]

Reason for Amendment. This amendment provides more consistency in respect to the counting of convictions that have been reversed, vacated, annulled, set aside, expunged, or pardoned. Currently, whether such sentences are counted depends upon the terminology used by the various jurisdictions. E.g., sentences resulting from convictions that have been annulled or set aside are counted; sentences resulting from convictions that have been expunged are not. Option 1 would count all sentences resulting from offenses committed at age eighteen or older unless reversed, vacated, annulled, set aside, expunged, or pardoned on the basis of a finding of legal defect or information pertaining to the defendant's innocence. Option 2 would count executed (non suspended) sentences of imprisonment of more than a certain amount, unless the action vacating, annulling, setting aside, expunging, or pardoning such sentence was based upon a finding of legal defect or information pertaining to the defendant's innocence. Lesser sentences for which the convictions had been vacated, annulled, set aside, expunged, or pardoned would not be counted.

(B). Proposed Amendment: [[Option 1: Section 4A1.2(e)(1) is amended by inserting the following additional sentences as the first two sentences:

"To establish the applicable time period for counting sentences under § 4A1 1(a), count back fifteen years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the fifteen-year period, the applicable time period would be 23 (15 + 8) years."

By deleting "within fifteen years of the defendant's commencement of the instant offense" and inserting in lieu thereof "on or after the beginning of the applicable time period";

And by deleting "such fifteen-year" and inserting in lieu thereof "the applicable time".]]

[[Option 2: Section 4A1.2(e)(1) is amended by inserting the following additional sentences as the first two sentences:

"To establish the applicable time period, count back twelve years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the twelve-year period, the applicable time period would be 20 (12 + 8) years.",

By deleting "of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense" and inserting in lieu thereof "that was imposed on or after the beginning of the applicable time period",

And by deleting "such fifteen-year" and inserting in lieu thereof "the applicable time".

Section 4A1.2(e) is amended by deleting subdivision (2) and by renumbering the remaining subdivisions accordingly.]]

Reason for Amendment: Both options of this amendment extend the applicable time period for counting prior convictions (for purposes of determining number of criminal history points and determining career offender status) to take into account substantial periods of incarceration. Option 1 retains the current guideline structure of 10- and 15-year "applicable time periods." Option 2 modifies the current guideline structure to provide for a uniform 12-year applicable time period.

Illustration of Section 4A1.2 as Amended by Option 1

[[Option 1: (1) *To establish the applicable time period for counting sentences under § 4A1 1(a), count back fifteen years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the fifteen-year period, the applicable time period would be 23 (15 + 8) years.* Any prior sentence of imprisonment exceeding one year and one month that was imposed [within fifteen years of the defendant's commencement of the instant offense] *on or after the beginning of the applicable time period* is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of [such fifteen-year] *the applicable time* period.]]

Illustration of Section 4A1.2 as Amended by Option 2

[[Option 2: (1) *To establish the applicable time period, count back twelve years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the twelve year period, the applicable time period would be 20 (12 + 8) years.* Any prior sentence [of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense] *that was imposed on or after the beginning of the applicable time period* is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of [such fifteen-year] *the applicable time* period.

[(2) Any other prior sentence that was imposed within ten years of the defendant s commencement of the instant offense is counted.]

([3] *2)* Any prior sentence not within the time periods specified above is not counted.

([4] *3)* The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by section 4A1.2(d)(2).]]

Section 4A1.3. Adequacy of Criminal History Category (Policy Statement)

26(A). Proposed Amendment: [[Option 1· Section 4A1.3 is amended by deleting the fourth sentence in the last paragraph and inserting in lieu thereof:

"In such a case, a sentence above the guideline range for a defendant with a Category VI criminal history may be warranted, but the court shall determine the extent of the departure by extrapolating a new guideline range from the existing guideline ranges in the Sentencing Table. For example, a defendant with a total offense level 10 who has 16 criminal history points and a guideline range of 24–30 months, would have a hypothetical Category VII criminal history, and a hypothetical guideline range of 27–33 months. In the case of unusually serious criminal history, or unusually high numbers of criminal history points, the extent of the departure may be greater than that suggested by extrapolation."]]

[[Option 2: Section 4A1.3 is amended in the fourth (last) paragraph by beginning a new (fifth) paragraph with the fifth sentence, and by inserting the following at the end of the fourth paragraph.

"In determining whether such a departure is warranted, the court should consider that, in the case of a defendant who has established a prior criminal record sufficient to warrant consideration of an upward departure from criminal history category VI, the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of that criminal record. For example, a defendant with nine prior 60-day jail sentences for offenses such as petty larceny, prostitution, or possession of gambling slips (a total of 18 points) has a higher number of criminal history points than the typical criminal history category VI defendant, but not necessarily a more serious criminal history overall. Where the court finds that the quantity and quality of the defendant's criminal history points are sufficient to warrant an upward departure, the court should use an incremental approach, moving down the sentencing table in one-level increments until it finds a guideline range appropriate to the case. Because qualitative judgment is important to this determination, it is not possible to specify the appropriate increments with precision; however, a one, two, or three-level increment should be sufficient to address all but the most egregious cases.".]]

Reason for Amendment: Options 1 and 2 both provide for a structured departure in the case of an offender with high criminal history point totals. The current guideline invites departures on the basis of high criminal history point totals, but suggests no structure for the extent of the departure. Option 1 requires an extrapolation of the Sentencing Table based on three-point increments, with greater departures permitted where criminal history is particularly serious or where criminal history point totals are unusually large. Option 2 accounts for the possibility that a defendant with a high criminal history point total may have accrued a large number of such points after committing numerous less serious offenses for which short prison sentences were imposed—in contrast with the more serious offender who has been incarcerated for long periods of time and has had less opportunity to accumulate large point totals.

(B). Proposed Amendment: Section 4A1.3 is amended in the first paragraph by inserting "(a) Degree of Risk." immediately before "If reliable"; by deleting "the seriousness of the defendant's past criminal conduct or"; by renumbering "(a)", "(b)", "(c)", and "(d)" as "(1)", "(2)", "(3)", and "(4)" respectively; and by deleting "; (e) prior similar adult criminal conduct not resulting in a criminal conviction".

Section 4A1.3 is amended in the second paragraph by deleting "the seriousness of the defendant's criminal history or"; by deleting "serious assaults" and inserting in lieu thereof "criminal acts"; by deleting "had a similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding, (4)"; by deleting "serious" immediately following "another"; by renumbering "(5)" as "(4)"; and by deleting "serious" immediately following "significantly more" and inserting in lieu thereof "extensive".

Section 4A1.3 is amended in the third paragraph by deleting "the seriousness of the defendant's criminal history or"; by deleting "minor misdemeanor"; and by deleting "serious" and inserting in lieu thereof "extensive".

Section 4A1.3 is amended by inserting the following additional subsection after the third paragraph:

"(b) Type of Risk. If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct, the court may consider imposing a sentence departing from the otherwise applicable guideline range. Such information may include, but is not limited to, information concerning the nature of the criminal conduct underlying a defendant's prior convictions, and prior similar adult criminal conduct not resulting in a criminal conviction, that establishes a pattern of particularly harmful or very minor criminal behavior.

An upward departure under this provision may be warranted when the criminal history category significantly underrepresents the seriousness of the defendant's criminal history. Examples might include offenders with a history of repetitive assaultive behavior, of repetitive sophisticated criminal behavior (e.g., a series of sophisticated frauds or a similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding), and those with unusually extensive and serious prior records.

A downward departure under this provision may be warranted when the criminal history category significantly overrepresents the seriousness of the defendant's criminal history. Examples might include offenders whose points result from unusually harsh sentencing for misdemeanors or from a string of convictions for relatively minor, victimless crimes such as prostitution.".

Section 4A1.3 is amended in the last paragraph by inserting "(c)" immediately before "In considering"; and by deleting "of the defendant's criminal history, and that the seriousness of" and inserting in lieu thereof "or extensiveness of the defendant's criminal history, and that".

Reason for Amendment: This amendment clarifies that departures under this section may be warranted when the criminal history category does not adequately address either the likelihood of new offenses being committed by the defendant, or the type of risk posed by the defendant.

(C). Proposed Amendment: Section 4A1.3 is amended by inserting the following at the end of the third paragraph:

"A downward departure on the basis of the adequacy of a defendant's criminal history category is not warranted when the guidelines in this chapter specify a particular criminal history category in lieu of the category that would result from calculation of the criminal history points under section 4A1.1. Such guidelines include sections 4B1.1 and 4B1.4.".

Reason for Amendment: This amendment expressly prohibits downward departures for defendants sentenced under the career criminal and armed career criminal sections of those guidelines when such departures are based on the court's conclusion that the criminal history category significantly over-represents the seriousness of a defendant's criminal history or the likelihood the defendant will commit further crimes. Some have argued that such departures are in direct conflict with the statutory directive in 28 U.S.C. 994(h) that career offenders be sentenced at or near the statutory maximum for the offense of conviction and the Commission's interpretation of this directive by placing all such defendants in Criminal History Category VI.

Section 4B1.1. Career Offender

Section 4B1.2. Definitions of Terms Used in Section 4B1.1

27(A). Proposed Amendment: The Commentary to section 4B1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof:

[[Option 1: "'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, before the maximum term has been increased by a sentencing enhancement statute applied because the defendant has one or more prior convictions. See e.g., sentencing enhancement statutes in [[18 U.S.C. 924(e);]] 21 U.S.C. 841(a)(1)(B); 21 U.S.C. 841(a)(1)(C); 21 U.S.C. 844(a). For example, where the defendant's statutory maximum of twenty years has been enhanced under 21 U.S.C. 841(a)(1)(C) to a thirty-year maximum because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' is twenty years and not thirty years.".]]

[[Option 2: "'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, after the maximum term has been increased by a sentencing enhancement statute applied because the defendant has

one or more prior convictions. See e.g., sentencing enhancement statutes in [[18 U.S.C. 924(e);]] 21 U.S.C. 841(a)(1)(B); 21 U.S.C. 841(a)(1)(C); 21 U.S.C. 844(a). For example, where the defendant's statutory maximum of twenty years has been enhanced under 21 U.S.C. 841(a)(1)(C) to a thirty-year maximum because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' is thirty years and not twenty years."]]

Reason for Amendment: This amendment clarifies the meaning of the term "offense statutory maximum," as used in this section. Under Option 1, an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record would not be used in determining the offense level under this guideline. Under Option 2, such enhancement would be used.

(B). Proposed Amendment: The Commentary to section 4B1.2 captioned "Application Notes" is amended in Note 3 by deleting "one year" and inserting in lieu thereof 'two years".

Reason for Amendment: This amendment prevents the counting of relatively less serious crimes of violence by requiring that the statutory maximum for the offense be greater than two years. Comment is requested as to whether the proposed amendment appropriately excludes only such "less serious" offenses.

(C). Proposed Amendment: Section 4B1.2(3) is amended by deleting the last sentence therein, and inserting in lieu thereof "The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.".

Reason for Amendment: This amendment conforms the section 4B1 1 definition of "sustaining a conviction" for an offense with the section 4A1.2 definition of "convicted of an offense."

(D). Issue for Comment: Comment is requested as to whether the Commission should identify (generically or specifically) certain categories of crimes of violence (now counted under section 4B1.2(1)) that would be considered "lesser" crimes of violence and not counted under this section. Such categories of offenses, or offenses might include non-aggravated assault, threatening communications, and similar offenses, or offenses with low statutory maxima. The use of any of these categories as qualifying crimes of violence under section 4B1.2(1) might be excluded, or such use might be limited to providing no more than one of the qualifying crimes of violence, or such use might result in a lesser career offender sentence—perhaps one that was "near the statutory maximum" but not "at the statutory maximum."

(E). Issue for Comment: Comment is requested as to whether the Commission should modify the requirement concerning the prior offenses counted for career offender purposes to provide that where the two prior offenses are not related (e.g., not consolidated for trial or sentence), they will be still counted as only one prior conviction if they could have been properly consolidated for trial as joinable offenses under Fed. R. Crim. P. 8(a).

(F). Issue for Comment: Comment is requested as to whether the Commission should modify the requisite sequence requirement in section 4B1.2(3) to require that the prior and instant offenses occur in a strictly consecutive sequence. The current rule requires only that the instant offense be committed subsequent to the date the judgment of conviction is entered for the two qualifying prior convictions. A strictly consecutive rule would require that the defendant commit the first "prior" offense, and be arrested, convicted, and sentenced for the offense, before the defendant commits the second "prior" offense, and is arrested, convicted, and sentenced for the offense. Finally, the instant offense would have to be committed subsequent to the second prior conviction. Departures might be encouraged in the case of numerous armed robberies, rapes, and other serious violent crimes not otherwise counted under the proposed rule. This rule would ensure that the career offender guideline is a more truly recidivist provision by requiring three separate encounters with the criminal justice system. Similarly, this rule would also reduce the possibility that a defendant who engages in a single short-lived crime spree will be classified as a career offender.

A report of the Commission's study of the Career Offender provisions is available for inspection at the Commission's offices.

Chapter Five, Part A—Sentencing Table

28(A). Issue for Comment: The Commission seeks comment on whether to establish a new Category 0 criminal history for offenders for whom Category I criminal history may be an inaccurate measure of likelihood of recidivism. A review of sentencing data suggests that offenders in Category I may exhibit certain different characteristics that could justify distinguishing their crimial history category. The Commission also seeks comment on how such a division would be drawn. One such proposed division would separate offenders with zero criminal history points and with no known criminal history of any kind into a Category 0, and other offenders with 0 or 1 point who had some known criminal history (including prior arrests or convictions) into a Category I. Finally, the Commission seeks comment on the various methods by which Category 0 offenders might be eligible for reduced sentences. Proposals might include establishment of a new Sentencing Table with a new Category 0, a Chapter Four reduction of a Category 0 offender's offense level, or the exposure of a Category 0 offender to a broader selection of alternatives to imprisonment.

A report of the Commission's study of Criminal History Category 0 is available for inspection at the Commission's offices.

(B). Issue for Comment: Defendants with more than 13 criminal history points are presently assigned to Category VI. This open-ended characteristic of the category has led some to question whether the criminal history categories of the Sentencing Table adequately take into account the criminal background of offenders with high numbers of criminal history points. Accordingly, the Commission solicits comment on the following issues:

(1) Whether a new Category VII should be added to the Sentencing Table, or whether offenders with large numbers of criminal history points should be sentenced solely pursuant to a departure;

(2) If a new Category VII is established, what should be the point spread of Category VI and the new Category VII; and should the new Category VII be capped, or should it be open-ended as the current Category VI is open-ended;

(3) When the defendant with large numbers of criminal history points is subject to a departure, under what circumstances would a departure be justified (e.g., a general sense of inadequacy of criminal history, or the existence of a particular number of points; and how would the extent of the departure be structured (e.g., by some principle of reasonableness, or by 10–15% extrapolation of the guideline range).

The following options provide alternative definitions of the offender population to which Category VII might apply:

[[Option 1—Category VI with a 3-point spread. Category VI would include defendants with 13–15 points, and a new Category VII would include cases with 16 or more points.]]

[[Option 2—Category VI with a 7-point spread. Category VI would include

defendants with 13–19 points, and a new Category VII would include cases with 20 or more points.]]

[[Option 3—Category VI and Category VII each with 3-point spreads. Category VI would include defendants with 13–15 points, and a new Category VII would include defendants with 16–18 points.]]

If a new Category VII is promulgated, defendants sentenced pursuant to section 4B1.1 (Career Offender) and section 4B1.4 (Armed Career Criminal) would continue to be sentenced at Category VI, except for those defendants who, on the basis of their criminal history point total, would otherwise be sentenced at a higher criminal history category.

A report of the Commission's study of Criminal History Category VII is available for inspection at the Commission's offices.

Chapter Five, Part A—Sentencing Table

Chapter Five, Part B—Probation

Chapter Five, Part C—Imprisonment

29. Proposed Amendment: [[Option 1: Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month.".

Section 5C1.1(d) is amended by deleting "one half of the minimum term" and inserting in lieu thereof "one month".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 in the third paragraph by deleting "one half of the minimum term specified in the guideline range" and inserting in lieu thereof "one month", by deleting "of four months" and inserting in lieu thereof "of one month of", and by deleting "requiring four months" and inserting in lieu thereof "requiring seven months".]]

[[Option 2: Section 5B1.1(a)(2) is amended by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5B1.1, captioned "Application Notes," is amended in Note 1(b) by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5B1.1, captioned "Application Notes," is amended in Note 2 by deleting "six" and inserting in lieu thereof "ten".

Section 5C1.1(c) is amended by deleting "six" and inserting in lieu thereof "ten".

Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month".

Section 5C1.1(d) is deleted in its entirety.

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 in the first sentence by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 in the fourth paragraph by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months."

The Commentary to section 5C1.1, captioned "Application Notes," is amended by deleting Note 4 in its entirety and by renumbering Notes 5, 6, 7, and 8 accordingly.]]

[[Option 3: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category I and Offense Level 8 by deleting "2–8" and inserting in lieu thereof "0–6".]]

[[Option 4: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", at Criminal History Category II and Offense Level 6 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category III and Offense Level 5 by deleting "1–7" and inserting in lieu thereof "0–6".]]

[[Option 5: Section 5C1.1(d) is amended by deleting "ten" and inserting in lieu thereof "twelve".

The Commentary to section 5C1.1, captioned Application Notes, is amended in Note 4 by deleting "ten" and inserting in lieu thereof "twelve".]]

[[Option 6: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", at Criminal History Category II and Offense Level 6 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category III and Offense Level 5 by deleting "1–7" and inserting in lieu thereof "0–6".

Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month.".

Section 5C1.1(d) is amended by deleting "one half of the minimum term" and inserting in lieu thereof "one month".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 in the third paragraph by deleting "one half of the minimum term specified in the guideline range" and inserting in lieu thereof "one month", by deleting "of four months" and inserting in lieu thereof "of one month of", and by deleting "requiring four months" and inserting in lieu thereof "requiring seven months".

Section 5C1.1(d) is amended by deleting "ten" and inserting in lieu thereof "twelve".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 by deleting "ten" and inserting in lieu thereof "twelve".]]

Reason for Amendment: These amendments, individually and in combination, redefine the "split sentence" and enlarge the number of defendants eligible for alternatives to imprisonment. The Commission seeks comment on whether these options are appropriate or whether they compromise the structure of the guidelines as originally drafted. The Commission further seeks comment on whether these alternatives should apply to all defendants at the offense levels specified or whether an offense-by-offense approach (e.g., excluding white-collar offenders) should be adopted. To assist in comment in respect to this amendment, a working group report on alternatives to imprisonment is available for inspection at the Commission's offices.

Option 1 redefines the "split sentence" to require service of at least one month of incarceration rather than the current requirement of at least one-

half of the minimum term, but not less than one month.

Option 2 expands the alternative of probation with confinement conditions to include those defendants who were previously eligible only for a "split sentence". It also incorporates Option 1's redefinition of the "split sentence".

Option 3 amends the guideline ranges in the Sentencing Table for Criminal History Category I at Offense Levels 7 and 8 by substituting a guideline range of 0–6 months for guideline ranges of 2–8 and 4–10 months respectively.

Option 4 amends the guideline ranges in the Sentencing Table for Criminal History Category I at Offense Level 7, Criminal History Category II at Offense Level 6, and Criminal History Category III at Offense Level 5. In each case a range of 0 to 6 months is substituted for the current range of 1 to 7 months.

Option 5 expands the availability of split sentences to guideline ranges with a minimum of twelve months or less. Currently "split sentences" are authorized only if minimum of the guideline range is ten months or less.

Option 6 incorporates Options 1, 4, and 5.

Additional Issue for Comment: The Commission requests comment on whether the menu of options available to the judge at sentencing should be expanded to include additional alternative programs such as intensive supervision, public service, shock incarceration (boot camps), day reporting centers, or other programs. Specifically, the Commission solicits comments on the adaptability of these or other programs to the current structure of the sentencing guidelines. To aid in focusing comment on this issue, a report titled "The Federal Offenders: A Program of Intermediate Punishments" is available for inspection at the Commission's offices.

Illustration of 5C1.1 as Amended by Option 1:

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than six months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in section 5C1.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term, but in no event less than one month,] *one month* is satisfied by imprisonment.

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term] *one month* is satisfied by imprisonment.

* * * * *

Commentary

Application Notes:

* * * * *

3. Subsection 5C1.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months, the court has three options:

* * * * *

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month,] *one month* must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 4–10 months, a sentence of imprisonment [of two months] *of one month* followed by a term of supervised release with a condition [requiring two months] *requiring three months* of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range.

4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than ten months, the court has two options:

It may impose a sentence of imprisonment.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range] *one month* must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 8–14 months, a sentence [of four months] *of one month of* imprisonment followed by a term of supervised release with a condition [requiring four months] *requiring seven months* community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range.

* * * * *

Illustration of Section 5B1.1 and Section 5C1.1 as amended by Option 2

Section 5B1.1. Imposition of a Term of Probation

(a) Subject to the statutory restrictions in subsection (b) below, sentence of probation is authorized:

* * * * *

(2) if the minimum term of imprisonment specified by the Sentencing Table is at least one but not more than [six] *ten* months, provided that the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention as provided in § 5C1.1(c)(2) (Imposition of a Term of Imprisonment).

* * * * *

Commentary

Application Notes:

* * * * *

(b) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than [six] *ten* months.

* * * * *

2. Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is more than [six] *ten* months, the guidelines do not authorize a sentence of probation. See section 5C1.1 (Imposition of a Term of Imprisonment).

* * * * *

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than [six] *ten* months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in section 5C1.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term, but in no event less than one month,] *one month* is satisfied by imprisonment.

[(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but nor more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.]

* * * * *

Commentary

Application Notes:

* * * * *

3. Subsection 5C1.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than [six] *ten* months, the court has three options:

It may impose a sentence of imprisonment.

* * * * *

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month,] *one month* must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 4–10 months, a sentence of imprisonment [of two months] *of one month* followed by a term of supervised release with a condition [requiring two months] *requiring three months* of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range.

* * * * *

[4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than ten months, the court has two options:

It may impose a sentence of imprisonment.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement or home detention. In such case, at least one-half of the minimum term specified in the guideline range must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 8–14 months, a sentence of four months imprisonment followed by a term of supervised release with a condition requiring four months community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range.

The preceding example illustrates a sentence that satisfies the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the guideline range. For example, where the guideline range is 8–14 months, both a sentence of four months imprisonment followed by a term of supervised release with a condition requiring six months of community confinement or home detention (under § 5C1.1(d)), and a sentence of five months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (also under section 5C1.1(d)) would be within the guideline range.]

Illustration of Section 5C1.1 as Amended by Option 5

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than [ten] *twelve* months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in section 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.

* * * * *

Commentary

Application Notes:

* * * * *

4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than [ten] *twelve* months, the court has two options:

* * * * *

Section 5E1.2. Fines for Individual Defendants

30. Proposed Amendment: Section 5E1.2(b) is amended by deleting "the fine imposed shall be within the range" and inserting in lieu thereof "the applicable guideline fine range is that".

Section 5E1.2(c)(2) is amended by deleting:

"Except as specified in (4) below, the maximum of the fine range is the amount shown in column B of the table below.",

and inserting in lieu thereof:

"The maximum of the fine range is the amount from column B or C of the table below. Column C shall be used when the statute setting forth the offense of conviction authorizes (i) a fine of more than $250,000 on a single count of conviction, or (ii) a fine for each day of violation. Column B shall be used in all other cases.".

Section 5E1.2(c)(3) is amended by inserting the following additional column:

"C

Maximum-Specified Offenses

$5,000
$7,500
$10,000
$20,000
$40,000
$90,000
$160,000
$250,000
$360,000
$550,000
$1,000,000
$1,500,000
$2,250,000
$3,000,000
$5,000,000
$8,000,000".

Section 5E1.2(c)(4) is deleted as follows:

"(4) Subsection (c)(2), limiting the maximum fine, does not apply if the defendant is convicted under a statute authorizing (A) a maximum fine greater than $250,000, or (B) a fine for each day of violation. In such cases, the court may impose a fine up to the maximum authorized by the statute.".

The Commentary to section 5E1.2 captioned "Application Notes" is amended in Note 5 by deleting the first sentence as follows:

"Subsection (c)(4) applies to statutes that contain special provisions permitting larger fines; the guidelines do not limit maximum fines in such cases.",

and inserting in lieu thereof:

"Column C of the fine table in subsection (c)(3) applies to statutes that contain special provisions authorizing higher fines.".

Reason for Amendment: This amendment provides a new column (C) to the fine table at section 5E1.2(c)(3). The purpose is to provide an upper limit to the guideline fine range that varies with the seriousness of the offense for defendants convicted under a statute authorizing a maximum fine greater than $250,000, or a fine for each day of violation. The current guidelines provide very limited guidance for such cases. For example, the current guideline fine range for sale of 1 gram of cocaine (a level 12 offense) is $3,000 to $2,000,000.

31. Proposed Amendment: Section 5E1.2(b) is amended by deleting "subsections (f) and (i)" and inserting in lieu thereof "subsection (f)".

Section 5E1.2(d) is amended in subdivision 6 by deleting "and"; by renumbering subdivision (7) as (8); and by inserting a new subdivision (7) as follows:

"(7) the costs to the government of any imprisonment, probation, or supervised release ordered; and".

Section 5E1.2 is amended by deleting subsection (i) as follows:

"(i) Notwithstanding of the provisions of subsection (c) of this section, but subject to the provisions of subsection (f) herein, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered.".

The Commentary to section 5E1.2 captioned "Application Notes" is amended in Note 7 by deleting the first sentence as follows:

"Subsection (i) provides for an additional fine sufficient to pay the costs of any imprisonment, probation, or supervised release ordered, subject to the defendant's

ability to pay as prescribed in subsection (f).",

and inserting in lieu thereof:

"Subsection (d)(7) provides for consideration of the costs to the government of any imprisonment, probation, or supervised release order.".

Reason for Amendment: This amendment converts this factor into one of several factors to be considered in setting the fine within the otherwise applicable guideline range. This amendment is designed to simplify operation of the guidelines while, at the same time, allowing the court to consider the costs to the government of any sentence of imprisonment, probation, or supervised release imposed in determining the total amount of the fine.

Section 5F1.4 Order of Notice to Victims

32. Proposed Amendment: Section 5F1.4 is amended by deleting:

"The court may order the defendant to pay the cost of giving notice to victims pursuant to 18 U.S.C. 3555. This cost may be set off against any fine imposed if the court determines that the imposition of both sanctions would be excessive.",

and inserting in lieu thereof:

"(a) In the case of a defendant convicted of an offense involving fraud or other intentionally deceptive practices, the court shall order the defendant to give reasonable notice to victims, as provided in 18 U.S.C. 3555, if the offense appears to have affected unidentified and uncompensated victims who could reasonably be identified in this manner, unless the court finds that the cost of giving notice would be disproportionate to the loss caused by the offense.

(b) If the court determines that the cost of giving such notice, taken together with the fine imposed upon the defendant, would be excessive, it shall set off the cost of giving such notice against any fine imposed to the extent necessary to provide an appropriate total sanction.".

The Commentary to section 5F1.4 captioned "Background" is amended in the first paragraph by deleting "the defendant to 'give" and inserting in lieu thereof "that the defendant give", by deleting "approve' to the victims of the offense.", and inserting in lieu thereof "approve, to the victims of the offense.", and by deleting "generally applicable sentencing factors listed in 18 U.S.C. 3553(a) and the cost involved in giving the notice as it relates to the loss caused by the crime" and inserting in lieu thereof "factors listed in 18 U.S.C. 3553(a), to the extent that they are applicable, and the cost involved in giving the notice as it relates to the loss caused by the offense".

The Commentary to section 5F1.4 captioned "Background" is amended by inserting the following additional sentence at the end of the first paragraph:

"This guideline provides that the court order the defendant to give reasonable notice to victims in the circumstances described.".

Reason for Amendment: This amendment provides more specific guidance as to circumstances under which an order of notice to victims is to be imposed.

Chapter Five, Part H—Specific Offender Characteristics

Chapter Five, Part A—Departures

33(A). Proposed Amendment: The Introductory Commentary to chapter Five, part H is amended by inserting the following additional paragraph as the third paragraph:

"Offender characteristics that are not ordinarily relevant to determining whether a sentence should be outside the guidelines, or where within the guidelines a sentence should fall, may be relevant to a departure from the guidelines if such factors, alone or in combination, are present to an unusual degree and are important to the sentencing purposes in the particular case.".

Reason for Amendment: This amendment provides expressly that departures may be appropriate when offender characteristics that are ordinarily not relevant to a guideline departure are present to an unusual degree, either alone or in combination, and are important to the sentencing purposes in the particular case.

(B). Proposed amendment: Section 5H1.1 is amended in the first paragraph by deleting "when the defendant is elderly and infirm" and inserting in lieu thereof "if combined with another factor (e.g., young and naive or elderly and infirm)".

Reason for Amendment: This amendment provides expressly that a departure may be appropriate where age is combined with other factors.

(C). Issue for Comment: The Commission requests comment on whether it should amend its policy statements to provide expressly whether or not a court may consider a defendant's lack of youthful guidance, history of family violence, or a similar factor as a ground for a departure from the applicable guideline range?

(D). Issue for Comment: The Commission requests comment on whether chapter Five, parts H and K, should be amended to authorize a downward departure where a court finds that the defendant's advanced age (e.g., age 60 or older) has reduced the defendant's risk of recidivism, provided that the defendant (1) serves a substantial portion of his sentence, (2) is not a major drug trafficker, and (3) has no current or past history of violent offenses. Comment is also requested on how such a departure, if authorized, might be structured to provide for consistency in application.

Section 5K1.1. Substantial Assistance to Authorities (Policy Statement)

34. Proposed Amendment: Section 5K1.1 is amended by deleting "Upon motion of the government stating" and inserting in lieu thereof "Upon a finding".

Section 5K1.1 is amended by inserting the following additional subsections:

"(b) Substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly when the extent and value of the assistance are difficult to ascertain.

(c) A departure below a statutorily required minimum sentence may be made only upon the motion of the government. 18 U.S.C. 3553(e).".

Commentary to section 5K1.1 captioned "Application Notes" is amended by deleting Notes 1 and 3 in their entirely, and by inserting the following as Note 1:

"1. Because of the nature of this factor, it is expected that the consideration of a downward departure will generally be based upon the motion of the government. As provided in subsection (b), substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly when the extent and value of such assistance are difficult to ascertain.".

Reason for Amendment: This amendment eliminates the requirement of a government motion and moves into the policy statement the admonition presently in the Commentary concerning the substantial weight that should be given the government's evaluation of a defendant's assistance.

Chapter Six—Sentencing Procedures and Plea Agreements

35(A). Proposed Amendment: The Commentary to section 6B1.2 is amended by inserting the following additional paragraph at the end:

"The Commission encourages the government [[in plea discussions]] [[prior to the Rule 11 colloquy]] to disclose to the defendant facts and circumstances of the offense and offender characteristics, known to the government, that are relevant to application of the sentencing guildelines."

Reason for Amendment: This amendment adds commentary recommending that the government disclose to the defendant information known to the government relevent to

application of the guidelines to encourage plea negotiations that realistically reflect probable outcomes under the sentencing guidelines.

(B). Issue for Comment: The Commission requests comment on whether it should amend its guidelines to provide that conduct that is described in a count dismissed pursuant to a plea agreement and that does not fall within the scope of section 1B1.3 (Relevant Conduct) may nevertheless be considered by the court in determining whether or not to depart from the applicable guideline range? For example, if a defendant pleads guilty to one robbery and another robbery count is dismissed, the conduct underlying the second count is not relevant conduct to the offense of conviction. The Commission solicits comment on whether the conduct underlying such a count should or should not be considered as a grounds for an upward departure.

(C). Issue for Comment: The Commission seeks comment on whether it should provide expressly that conduct of which a defendant is acquitted, but which the court at sentencing nevertheless determines to have been established by a preponderance of the evidence, may be used for the following purposes: (1) Determining the offense level, (2) selecting a sentence within the guideline range, and (3) as a basis for imposing a sentence above the guideline range (upward departure).

Miscellaneous Substantive, Clarifying, Conforming, and Technical Amendments

36(A). Proposed Amendment to section 1B1.1 (Application Instructions): The Commentary to section 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following at the end:

"(m) 'Reckless' refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

(n) 'Criminally negligent' refers to conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless.".

The Commentary to section 2A1.4 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Reckless' refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. The term thus",

and inserting in lieu thereof:

" 'Reckless' and 'criminally negligent' are defined in the Commentary to § 1B1.1 (Application Instructions). This definition of reckless conduct";

and by inserting the following additional sentence at the end:

"Offenses under this guideline involving criminally negligent conduct generally will be encountered as assimilative crimes.".

The Commentary to section 2A1.4 captioned "Application Notes" is amended by deleting Note 2; and in the caption by deleting "Notes" and inserting in lieu thereof "Note".

The Commentary to section 2A5.2 is amended by inserting the following immediately before "Background":

"Application Note:

1. 'Reckless' is defined in the Commentary to § 1B1.1 (Application Instructions).".

The Commentary to section 2F1.1 captioned "Application Notes" is amended in Note 2 by deleting "is" and inserting in lieu thereof "and 'reckless' (subsection (b)(4)) are".

The Commentary to section 2N2.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

" 'Reckless' and 'criminally negligent' are defined in the Commentary to § 1B1.1 (Application Instructions).".

The Commentary to section 3C1.2 captioned "Application Notes" is amended in Note 2 by deleting "section 2A1.4 (Involuntary Manslaughter)" and inserting in lieu thereof "section 1B1.1 (Application Instructions)".

Reason for Amendment: The terms "reckless" and "criminally negligent" are used in a number of guidelines. For consistency and clarity, this amendment transfers the definitions of these terms to section 1B1.1 (Application Instructions), the guideline section containing definitions of general applicability. References to these definitions are added and conformed accordingly.

(B). Proposed Amendment to § 1B1.1 (Application Instructions) and various chapter Two offense guidelines: The Commentary to section 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional subdivision at the end:

"(m) 'Defendant' refers to the defendant individually, and not to other participants. Therefore, when used in connection with roles, status, knowledge, or motive, it restricts consideration to the role, status, knowledge or motive of the defendant. Examples include section 2G1.2(b)(2) ('If the defendant was a parent, relative, or legal guardian'), section 2H1.1(b)(1) ('If the defendant was a public official'), section 2L1.1 ('If the defendant committed the offense other than for profit'), section 2S1.1(b)(1) ('If the defendant knew or believed'), section 2T1.4 ('If the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income'), section 3A1.1 ('If the defendant knew or should have known') section 3B1.1 and section 3B1.2 ('Based on the defendant's role'), and section 3B1.3 ('If the defendant violated a position of public or private trust or used a special skill').

When used in connection with conduct (acts and omissions), the use of the term 'defendant' restricts consideration to the acts and omissions that the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused. Examples include section 3C1.1 ('If the defendant willfully obstructed or impeded') and section 3C1.2 ('If the defendant recklessly created a substantial risk').".

Section 2A5.2(a)(1) is amended by deleting "defendant intentionally endangered" and inserting in lieu thereof "offense involved intentionally endangering".

Section 2A5.2(a)(2) is amended by deleting "defendant recklessly endangered" and inserting in lieu thereof "offense involved recklessly endangering".

Section 2A6.1(b)(1) is amended by deleting "defendant engaged in" and inserting in lieu thereof "offense involved".

Section 2A6.1(b)(2) is amended by deleting "defendant's conduct" and inserting in lieu thereof "offense".

Section 2S1.3(a)(1) is amended by deleting "defendant" and inserting in lieu thereof "offense involved"; by deleting "structured" and inserting in lieu thereof "structuring"; and by deleting "filed, or caused" and inserting in lieu thereof "filing, or causing".

Reason for Amendment: This amendment clarifies that the term 'defendant' has different meanings in different contexts. When used in respect to status, position, knowledge, or motive, it refers to the defendant only (e.g., 'If the defendant knew or should have known,' 'If the defendant was a parent, guardian'). When used in respect to conduct, it refers to the personal conduct of the defendant (i.e., acts or omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant). In certain guidelines (sections 2A5.2(a) (1) and (2), 2A6.1(b) (1) and (2), and 2S1.3(a)(1)), the Commission has used the term 'defendant' although the broader term 'offense involved' seems more consistent with the remainder of the

guidelines. This amendment, in these instances, substitutes the term 'offense involved."

(C). Proposed Amendment to section 1B1.2 (Applicable Guidelines): Section 1B1.2(a) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "a plea agreement (written or made orally on the record)".

Section 1B1.2(c) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "plea agreement (written or made orally on the record)".

Reason for Amendment: This amendment revises the guideline at section 1B1.2 to clarify the meaning of "stipulation" as used in this guideline, consistent with the amendment of the Commentary to this guideline effective November 1, 1991 (Appendix C, amendment 434).

(D). Proposed Amendment to section 1B1.10 (Retroactivity of Amended Guideline Range (Policy Statement)): Section 1B1.10(d) is amended by inserting "347," immediately after "341,".

Reason for Amendment: This amendment provides for retroactive application of amendment 347, which was effective November 1, 1990. Among the factors the Commission considers in deciding whether an amendment should apply retroactively are: (1) the amendment's purpose; (2) the magnitude of the change in guideline range the amendment makes; and (3) the difficulty in applying the amendment retroactively. In the case of amendment 347, these factors suggest the appropriateness of retroactive application. First, the amendment's purpose was to clarify section 3C1.1's application. It has been suggested that the misapplication of section 3C1.1 before the amendment might have been more widespread than the Commission first believed. Second, the interaction between sections 3C1.1 and 3E1.1 means that pre-amendment decisions to apply section 3C1.1 might have had a four-level rather than a two-level effect. Third, the presentence investigation report in the vast majority of cases will contain all information necessary to determine whether section 3C1.1 was appropriately applied in the first instance. Thus, retroactive application of section 3C1.1's amended commentary should be possible with little additional fact finding or hearings.

(E). Proposed Amendment to chapter One, part B (General Application Principles): Chapter One, part B, is amended by inserting an additional guideline at the end, titled "Section 1B1.11. Definitions", containing: (1) The text of Application Note 1 of section 1B1.1 as subsection (a); (2) the text of the first paragraph of Application Note 2 of section 1B1.1 as subsection (b); and (3) the following commentary:

"Commentary

Application Note:

1. The term 'e.g.' (for example) is used to set forth examples. It is not a term of limitation.

The term 'i.e.' (that is) is used to define an item or concept further and, therefore, is a term of limitation.

The term 'includes' is used to set forth items contained in a particular category. It does not, however, necessarily provide an exhaustive listing of the items in that category.".

The Commentary to section 1B1.1 captioned "Application Notes" is amended by deleting Notes 1 and 2; and by renumbering Notes 3, 4, and 5 as 1, 2, and 3, respectively.

The Commentary to section 1B1.1 captioned "Application Notes" is amended in Notes 1 (formerly Note 3) by deleting:

"does not necessarily include every statute covered by that guideline. In addition, some statutes may be",

and inserting in lieu thereof:

"provides examples of the statutes covered by that guideline. Some guidelines apply to more than one statute, and some statutes are";

and by inserting the following additional paragraph at the end:

"In the case of an offense that is not listed in the Guideline Manual (either in the Statutory Provisions or Statutory Index), the list of offenses set forth in the Statutory Provisions to the various offense guidelines may be helpful in making the determination required under section 2x5.1 (Other Offenses) as to whether there is a sufficiently analogous guideline.".

Reason for Amendment: This amendment moves definitions of general applicability, currently contained in the Commentary to section 1B1.1, to a separate guideline section for ease of reference, and elevates these definitions from commentary to guidelines to reflect their importance.

(F). Proposed Amendment to Chapter Two, Offense Conduct: Section 2A2.1(b)(1) is amended by inserting "or" immediately before "(B)", and by deleting:

";or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels";

Section 2A2.2(b)(3) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Section 2A3.1(b)(4) is amended by inserting "or" immediately before "(B)", and by deleting"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Section 2A4.1(b)(2) is amended by inserting "or" immediately before "(B)", and by deleting "; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Section 2B3.1(b)(3) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Section 2B3.2(b)(4) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels; or

Section 2E2.1(b)(2) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Reason for Amendment: This amendment deletes intermediate offense level adjustments that are not subject to adequate definition and that are unnecessary to the operation of the guidelines since a court may accomplish the result achieved through selecting an intermediate offense level by instead selecting the higher or lower enhancement and adjusting the sentence within the applicable range.

(G). Proposed Amendment to Chapter Two, Offense Conduct: Section 2A2.4(c)(1) is amended by deleting "defendant is convicted under 18 U.S.C. 111 and the" Immediately before "conduct".

Section 2D1.1(b)(2) is amended by deleting "is convicted of violating 21 U.S.C. 960(a)" and inserting in lieu thereof "unlawfully imported or exported a controlled substance"; and by inserting "or export" immediately following "to import".

Section 2K1.5(b)(1) is amended by deleting "defendant is convicted under 49 U.S.C. 1472(1)(2) (i.e., the defendant acted" and inserting in lieu thereof

"offense was committed", and by deleting "life)" and inserting in lieu thereof "life".

Reason for Amendment: This amendment, consistent with the overall structure of the guidelines, provides for the application of these adjustments on the basis of the underlying conduct rather than upon a requirement of a conviction under a specific statute.

(H). Proposed Amendment to Section 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft): The Commentary to § 2B1.1 captioned "Application Notes" is amended in the first paragraph of Note 2 by inserting the following additional sentences immediately after the second sentence:

"Market value is to be determined in relation to the victim of the offense. For example, in the case of merchandise taken from a retailer, the market value is the retail market value; in the case of merchandise taken from a wholesaler, the market value is the wholesale market value.".

Reason for Amendment: This amendment adds language to the Commentary of Section 2B1.1 to provide expressly that market value is to be determined in relation to the particular victim, an approach that is consistent with the other portions of this definition. Although the determination of loss is not subject to precise definition in all circumstances, a victim-oriented approach should generally make the determination more straightforward. For example, in the case of 20 television sets stolen from a wholesaler, it should generally be easier to determine the wholesale market value than the eventual retail value (which may differ widely among the various stores serviced by the wholesaler).

(I). Proposed Amendment to Section 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States): The Commentary to Section 2B5.1 captioned "Application Notes"is amended in Note 3 by deleting "merely photocopy notes or otherwise", and by inserting "(e.g., a mere photocopy of a note)" immediately following "so obviously counterfeit".

The Commentary to Section 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. For the purpose of subsection (b)(1), do not count items that clearly were not intended for circulation (e.g., discarded, defective items).".

Reason for Amendment: This amendment clarifies the operation of this guideline.

(J). Proposed Amendment to Section 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking): The Commentary to Section 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" in the table captioned "Cocaine and Other Schedule I and II Stimulants" by inserting at the end:

"N-N-Dimethylamphetamine=40 gm of marihuana",

and in the table captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting at the end:

"Phenylcyclohexamine (PCE)=5.79 kg of marihuana".

Reason for Amendment: This amendment inserts equivalencies for two additional controlled substances to make the Drug Equivalency Table more comprehensive.

(K). Proposed Amendment to section 2D1.4 (Attempts and Conspiracies) and various Chapter Two offense guidelines: Sections 2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5 are amended in their titles by inserting at the end thereof in each instance "; Attempt or Conspiracy".

Section 2D1.4 is deleted in its entirety.

The Commentary to section 2D1.1 captioned "Application Notes" is amended in Note 12 by deleting the second, third, and fourth sentences and inserting in lieu thereof:

"Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.".

The Commentary to section 2D1.1 captioned "Application Notes" is amended in Note 12 by inserting the following additional paragraphs at the end:

"If the offense involved both a substantive drug offense and an attempt or conspiracy (e.g., sale of five grams of heroin and an attempt to sell an additional ten grams of heroin), the total quantity involved shall be aggregated to determine the scale of the offense.

In an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.".

The Commentary to section 2D1.6 captioned "Application Notes" is amended in Note 1 by deleting "Commentary to section 2D1.1, and Application Notes 1 and 2 of the Commentary to section 2D1.4," and inserting in lieu thereof "Commentary to section 2D1.1".

The Commentary to section 2X1.1 captioned "Application Notes" is amended in Note 1 by deleting "section 2D1.4 (Attempts and Conspiracies)" wherever it appears and inserting in lieu thereof in each instance:

"Section 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); section 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy); section 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy); section 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy); section 2D1.7 (Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy); section 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy); section 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy); section 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy); section 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); section 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy); section 2D1.13 (Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy); section 2D2.1 (Unlawful Possession; Attempt or Conspiracy); section 2D2.2 (Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy); section 2D3.1 (Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance; Attempt or Conspiracy); section 2D3.2 (Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota; Attempt or Conspiracy); section 2D3.3 (Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person; Attempt or Conspiracy); section 2D3.4 (Illegal Transfer or Transshipment of a Controlled Substance; Attempt or Conspiracy); and section 2D3.5 (Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines; Attempt or Conspiracy)".

Appendix A (Statutory Index) is amended in the line beginning 21 U.S.C. 846 by deleting "2D1.4" and inserting in lieu thereof: "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5"; and in the line beginning 21 U.S.C. § 963 by deleting "2D1.4" and inserting in lieu thereof: "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5".

Reason for Amendment: This amendment clarifies and simplifies the guideline provisions dealing with attempts and conspiracies in drug cases and conforms the structure of these provisions to that of other offense guidelines that specifically address attempts and conspiracies (i.e., attempts and conspiracies described in section 2X1.1(c)).

(L). Proposed Amendment to section 2E1.4 (Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire): Section 2E1.4(a)(2) is amended by inserting at the end "from sections 2A1.2 (First Degree Murder), 2A1.5 (Conspiracy or Solicitation to Commit Murder), or 2A2.1 (Assault With Intent to Commit Murder), as applicable".

The Commentary to section 2E1.4 captioned "Background" is amended by deleting:

"The statute does not require that a murder covered by this section has been committed. The maximum term of imprisonment authorized by statute ranges from five years to life imprisonment.",

and inserting in lieu thereof:

"This guideline, and the statute to which it applies, does not require that a murder actually have been committed.".

Reason for Amendment: This amendment makes the wording of subsection (a)(2) and the Background Commentary more precise. The reference in the current Background Commentary to a maximum term of five years is obsolete; this sentence is deleted as unnecessary.

(M). Proposed Amendment to section 2J1.6 (Failure to Appear by Defendant): Section 2J1.6(b)(1) is amended by deleting "away from the facility" and inserting in lieu thereof "in failure to appear status".

The Commentary to section 2J1.6 captioned "Application Notes" is amended by inserting the following additional notes:

"5. 'Voluntarily surrendering' includes voluntarily reporting to the court or to the correctional facility (in the case of a failure to report for service of sentence), or turning one's self in to a law enforcement authority as a person in failure to appear status. It does not, however, include notifying authorities of one's failure to appear status after being arrested on another charge.

6. 'While in failure to appear status' means at any time between the time the defendant was scheduled to report and the time the defendant was returned to federal custody."

Reason for Amendment: The amendment clarifies the operation of this guideline.

(N). Proposed Amendment to chapter Two, part L, subpart 2: The title of section 2L2.1 is amended by inserting at the end "; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law".

The Commentary to section 2L2.1 captioned "Statutory Provisions" is amended by inserting "8 U.S.C. 1325(b);" immediately before "18 U.S.C.", and by inserting "1015," immediately after "Sections".

The title of section 2L2.2 is amended by inserting at the end: "; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law".

The Commentary to section 2L2.2 captioned "Statutory Provisions" is amended by deleting "18 U.S.C." and inserting in lieu thereof "8 U.S.C. 1325(b); 18 U.S.C. 911, 1015,".

Appendix A (Statutory Index) is amended by inserting in the appropriate place by title and section:

"8 U.S.C. 1325(b) * * * 2L2.1, 2L2.2".

Reason for Amendment: This amendment expands the titles of sections 2L2.1 and 2L2.2 to include additional statutes appropriately covered by these provisions. Conforming revisions are made in the Statutory Provisions and Appendix A (Statutory Index).

(O). Proposed Amendment to section 2P1.1 (Escape, Instigating or Assisting Escape): Section 2P1.1(b)(3) is amended by deleting "the non-secure custody of a community corrections center, community treatment center, 'halfway house,' or similar facility" and inserting in lieu thereof "non-secure custody" and by inserting "(A) the offense involved a failure to return from a furlough from secure custody; or (B)" immediately following "apply if".

The Commentary to section 2P1.1 captioned "Application Notes" is amended in Note 2 by deleting "(not in connection with an arrest or other charges)" and inserting in lieu thereof "; it does not include notifying authorities of one's status as an escapee after being arrested on another charge".

Reason for Amendment: This amendment clarifies (1) that a failure to return from a furlough from secure custody is excluded from subsection (b)(3); and (2) that an institution with no security perimeter (a minimum security camp) is included under subsection (b)(3) (U.S. v. Agudelo, 768 F.Supp. 339 (N.D. Fla. 1991)). In addition, it makes an editorial improvement to the commentary.

(P). Proposed Amendment to chapter two, part T, subpart 3, Customs Taxes: The Introductory Commentary to Chapter two, part T, subpart 3, is amended by deleting ". These guidelines are primarily aimed at" and inserting in lieu thereof "and is designed to address violations involving"; by deleting "They are" and inserting in lieu thereof "It is"; by deleting "legislation generally applies" and inserting in lieu thereof "criminal statutes apply"; by inserting "if applicable," immediately following "guideline,"; and by deleting "these guidelines" and inserting in lieu thereof "the guideline in this part".

Section 2T3.1 is amended in the title by inserting at the end "; Receiving or Trafficking in Smuggled Property".

Section 2T3.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involves a contraband item covered by another offense guideline, apply that offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to section 2T3.1 captioned "Application Notes" is amended in Note 2 by deleting "the court should impose a sentence above the guideline" and inserting in lieu thereof "an upward departure may be warranted".

Section 2T3.2, including accompanying commentary, is deleted in its entirety.

Appendix A (Statutory Index) is amended in the lines beginning "18 U.S.C. 545", "18 U.S.C. 547", "18 U.S.C. 549", and "19 U.S.C. 1464" by deleting in each instance ", 2T3.2".

Reason for Amendment: This amendment inserts a cross reference in section 2T3.1 to provide the legal authority to implement the policy set forth in the introductory commentary; consolidates sections 2T3.1 and 2T3.2 which contain identical characteristics; and makes conforming changes in commentary.

(Q). Proposed Amendment to section 2X1.1 (Attempt, Solicitation, or Conspiracy): Section 2X1.1(b)(3) is amended by deleting "(A)"; and by deleting:

"(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the

offense level is the same as that for the object offense.".

The Commentary to Section 2X1.1 captioned "Application Notes" is amended in the last paragraph of Note 1 by inserting "Section 2B4.1 Bribery in Procurement of Bank Loan and Other Commercial Bribery; Solicitation of Bribe);" immediately before "Section 2C1.1"; by inserting "Section 2C1.5 (Payments to Obtain Public Office; Solicitation of Payment); Section 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper; Solicitation of Loan or Gratuity);" immediately before "Section 2E5.1"; and by inserting "; Section 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations; Solicitation of Prohibited Payment or Loan); Section 2J1.8 (Bribery of Witness; Solicitation of Bribe); Section 2J1.9 (Payment to Witness; Solicitation of Payment)" immediately before the period at the end of the sentence.

The Commentary to Section 2X1.1 captioned "Application Notes" is amended in Note 4 in the second sentence by deleting "(b)(3)(A)" and inserting in lieu thereof "(b)(3)".

Conforming Amendments: Section 2B4.1 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2C1.5 is amended in the title by inserting at the end "; Solicitation of Payment".

Section 2C1.6 is amended in the title by inserting at the end "; Solicitation of Loan or Gratuity".

Section 2E5.6 is amended in the title by inserting at the end "; Solicitation of Prohibited Payment or Loan".

Section 2J1.8 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2J1.9 is amended in the title by inserting at the end "; Solicitation of Payment".

Reason for Amendment: This amendment simplifies the structure of this guideline by deleting subsection (b)(3)(B) and addressing the offenses currently covered by this subsection by including a specific reference to solicitation in the titles of the appropriate offense guideline, as is done in the case of conspiracy and attempt.

(R). Proposed Amendment to Sections 2X3.1 (Accessory After the Fact) and 2X4.1 (Misprision of Felony): Section 2X3.1 is amended by deleting "4" and inserting in lieu therof "level 1", and by inserting "level" immediately before "30".

Section 2X4.1 is amended by deleting "4" and inserting in lieu thereof "level 1", and by inserting "level" immediately before "19".

Reason for Amendment: This amendment corrects an anomaly. For example, under the current guidelines, in the case of a level 6 or 7 theft or fraud (or any other offense with an offense level of 6 or 7), a conviction for the substantive offense with a 4-level reduction for minimal role will result in an offense level of 2 or 3, respectively. A conviction for accessory after the fact or misprision (lesser offenses) will result in a higher final offense (level 4) because of the alternative minimum offense level. This anomaly is removed by the revision of the minimum offense level under Sections 2X3.1 and 2X4.1.

(S). Proposed Amendment to Section 3A1.2 (Official Victim): Section 3A1.2(a) is amended by deleting "a law enforcement or corrections officer; a former law enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114;" and inserting in lieu thereof "a government officer or employee; a former government officer or employee;".

The Commentary to section 3A1.2 captioned "Application Notes" is amended in Note 2 by deleting "are not expressly covered by this section. The court should make an upward departure of at least three levels in those unusual cases in which such persons are victims." and inserting in lieu thereof "although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted.".

The Commentary to section 3A1.2 captioned "Application Notes" is amended in Note 4 by deleting "law enforcement or corrections officer or other person covered under 18 U.S.C. 1114" and inserting in lieu thereof "government officer or employee"; and by inserting at the end "This adjustment also would not apply in the case of a robbery of a postal employee because the offense guideline for robbery contains an enhancement (section 2B3.1(a)) that takes such conduct into account.".

Reason for Amendment: Section 3A1.2 (entitled "Official Victim") currently covers some but not all government officers or employees victimized on account of their official position. Primarily, it covers law enforcement and correctional officers and employees, prosecutors and judges; but because of the reference to 18 U.S.C. 1114, it also covers postal workers and members of the Coast Guard. To add to the complexity, an application note instructs that in the case of certain high level officials, an upward departure of at least 3 levels should be made. Unstated is whether a 3-level upward departure should be made in the case of a governmental officer or employee who is not covered by this section but who nonetheless is targeted as a victim because of his official status. This amendment adopts a more generic approach. Under this amendment, this section would apply to all government officers or employees targeted on account of their official position or in retaliation for their official conduct.

(T). Proposed Amendment to section 3B1.3 (Abuse of Position of Trust or Use of Special Skill): Section 3B1.3 is amended in the title by inserting "Special" immediately before "Trust".

Section 3B1.3 is amended by inserting "special" immediately before "trust" wherever the latter term appears.

The Commentary to section 3B1.3 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. The position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons. This adjustment, for example, would not apply to an embezzlement by an ordinary bank teller.",

and inserting in lieu thereof:

"1. 'Special trust' refers to a position of public or private trust characterized by professional or managerial discretion (i.e., substantial discretionary judgment that is ordinarily given considerable deference). Such positions ordinarily are subject to significantly less monitoring than the typical employee. For this enhancement to apply, the position of trust must have contributed in some significant way to facilitating the commission or concealment of the offense (e.g., by making the detection of the offense or the defendant's responsibility for the offense more difficult). This adjustment, for example, would apply in the case of an embezzlement of a client's funds by an attorney serving as a guardian, a fraudulent loan scheme by a bank president, the theft of merchandise by a police officer who finds the door unlocked during a routine patrol, or the criminal sexual abuse of a patient by a physician under the guise of an examination. This adjustment would not apply in the case of an embezzlement or theft by an ordinary bank teller or postal employee because such positions are not characterized by the factors described above."

Reason for Amendment: Numerous questions have arisen in the application of this section in respect to the intended scope of this adjustment. This amendment reformulates the definition

of an abuse of position of trust to provide an operationally more workable definition that appropriately distinguishes cases warranting this enhancement.

(U). Proposed Amendment to chapter Five, part E (Restitution, Fines, Assessments, Forfeitures): Chapter Five, part E, is amended by inserting the following additional policy statement:

"Section 5E1.5. Costs of Prosecution (Policy Statement)

Costs of prosecution shall be imposed on a defendant as required by statute.

Commentary

Background: Various statutes require the court to impose the costs of prosecution: 7 U.S.C. 13 (larceny or embezzlement in connection with commodity exchanges); 21 U.S.C. 844 (simple possession of controlled substances) (unless the court finds that the defendant lacks the ability to pay); 26 U.S.C. 7201 (attempt to defeat or evade income tax); 26 U.S.C. 7202 (willful failure to collect or pay tax); 26 U.S.C. 7203 (willful failure to file income tax return, supply information or pay tax); 26 U.S.C. 7206 (fraud and false statements); 26 U.S.C. 7210 (failure to obey summons); 26 U.S.C. 7213 (unauthorized disclosure of information); 26 U.S.C. 7215 (offenses with respect to collected taxes); 26 U.S.C. 7216 (disclosure or use of information by preparers of returns); 26 U.S.C. 7232 (failure to register or false statement by gasoline manufacturer or producer); 42 U.S.C. 1302c-9 (improper FOIA disclosure); 43 U.S.C. 942-6 (rights of way for Alaskan wagon roads).".

Reason for Amendment: A number of statutes mandate imposition of the costs of prosecution. The proposed policy statement would make the Guidelines Manual more comprehensive by including notice to users of these statutory sentencing requirements.

(V). Proposed amendment to chapter Five, part K (Departures): Chapter Five, part K, is amended by inserting the following additional policy statement:

"Section 5K2.17. Extraordinary Physical Impairment (Policy Statement)

If a defendant suffers from an extraordinary physical impairment, a sentence below the applicable guidline range may be warranted; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.".

Reason for Amendment: For purposes of clarity and comprehensiveness, this amendment takes an existing ground for departure discussed in section 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse) and creates a new section in chapter Five, part K (Departures) that specifically deals with this ground for departure.

(W). Proposed Amendment to section 6B1.2 (Standards for Acceptance of Plea Agreements): Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

The Commentary to section 6B1.2 is amended by deleting "This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed. R. Crim, P. A judge" and inserting in lieu thereof "The court", and by inserting the following additional sentences immediately before "This requirement";

"A defendant who enters a plea of guilty in a timely manner will enhance the likelihood of his receiving a reduction in offense level by 2 levels under § 3E1.1 (Acceptance of Responsibility). Further reduction in offense level (or sentence) due to a plea agreement will tend to undermine the sentencing guidelines.".

The Commentary to section 6B1.2 is amended in the first sentence of the second paragraph by deleting "will" and inserting in lieu thereof "may".

Reason for Amendment: This amendment expresses the Commission's position on the appropriate interaction between section 3E1.1 and section 6B1.2, and makes several editorial improvements.

(X). Proposed Amendment to section 6B1.2 (Standards for Acceptance of Plea Agreements): Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

Section 6B1.2(a) is amended by inserting the following additional paragraph at the end:

"Provided, that the acceptance of a plea agreement that includes the dismissal of a charge or a plea agreement not to pursue a potential charge shall not exclude the conduct underlying such charge from consideration under section 1B1.3 (Relevant Conduct) in respect to the offense of which the defendant is convicted.".

The Commentary to section 6B1.2 is amended by inserting the following additional paragraph as the second paragraph:

"Compliance with subsection (a) of this policy statement will reduce the likelihood that a plea agreement will undermine the sentencing guidelines, intentionally or unintentionally. It is to be noted, however, that the acceptance of a plea agreement that includes the dismissal of a charge, or a plea agreement not to pursue a potential charge will, in no event, exclude the conduct underlying such charge from consideration under the provisions of section 1B1.3 (Relevant Conduct) that are applicable to the offense of which the defendant is convicted.".

The Commentary to section 6B1.2 is amended in the third (formerly second) paragraph by deleting "will" and inserting in lieu thereof "should"; by deleting "the contemplated sentence is" and inserting in lieu thereof "such sentence is an appropriate sentence"; and by deleting "recommended sentence or agreement" and inserting in lieu thereof "sentence".

Reason for Amendment: This amendment clarifies that a plea agreement to dismiss a charge or not to pursue a potential charge does not insulate the conduct underlying such charge from the operation of section 1B1.3 (Relevant Conduct).

(Y). Proposed Amendment to section 5D1.1 (Imposition of a Term of Supervised Release): Section 5D1.1(a) is amended by inserting "(other than a sentence of life imprisonment)" immediately before "is imposed".

The Commentary to section 5D1.1 captioned "Application Notes" is amended in the first sentence of Note 1 by inserting "(other than a sentence of life imprisonment)" immediately following "year".

Reason for Amendment: Currently, this guideline requires imposition of a term of supervised release whenever a term of imprisonment exceeding one year is imposed. This amendment provides an exception to this requirement in the case of a sentence of life imprisonment.

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Part IV

Office of Personnel Management

5 CFR Parts 831, et al.

Court Orders Affecting Retirement Benefits; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, and 843

RIN 3206-AE14

Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed 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 proposed regulations would 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.

DATES: Comments must be received on or before March 3, 1992.

ADDRESSES: Send comments to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

Comments on the information collection requirements contained in this regulation also should be filed with the Office of Management and Budget. (See below under Paperwork Reduction Act.)

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: These regulations would replace the existing separate sets of interim regulations under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS).

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.

The interim regulations published May 13, 1985, as amended, remain in effect for 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 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. The interim regulations published December 31, 1986, remain in effect for court orders affecting FERS benefits.

1. Reasons to Change Processing Procedures

The proposed 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. The proposed 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 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 existing regulations, when we receive a court order that awards a benefit to a former spouse of a CSRS 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.

The proposed 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 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 court. 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.

2. Changes Having Broad Application

The proposed regulations would consolidate the CSRS and FERS regulations concerning court orders affecting retirement benefits into a single set of regulations applicable to both retirement systems.

We have made several changes 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. The proposed regulations distinguish clearly among regulations that affect employee annuities, refunds of employee contributions, and former spouse survivor annuities. Under the current regulation, 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. The proposed 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.

These proposed 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 current 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.

3. 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. 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. More detail on the regulatory structure is available in the analysis of § 838.102.

4. Section Analysis

Section 838.101(a) states the purpose of the regulations. The regulations cover both CSRS and FERS. Our role under the proposed regulations changes from one of an active adjudicator of disputes concerning the interpretation of court orders to one of performing only the ministerial function of executing clear, specific, and unambiguous instructions. As we explained in the section of this supplementary information entitled "Reasons to Change Processing Procedures," the proper place to resolve disputes concerning division of retirement benefits upon termination of marriage is the State courts.

OPM's comments on the legislation that in 1978 enacted section 8345(j) of title 5, United States Code, favored placing the responsibility for deciding the issue of divisions of CSRS employee annuities and refunds of employee contributions as marital property in the State courts. On May 7, 1979, the supplementary information for the original proposed regulations (published at 44 FR 26885) recognized the traditional role of State courts in domestic relations matters. Despite the legislative intent to have all property issues resolved in the State court, we, in interpreting ambiguous orders, have been drawn into marital disputes. Section 838.101(a) states our intent to separate ourselves from these marital disputes. The approach of these regulations is to require the State courts to resolve all disputes, requiring us to perform only the ministerial function of following the State courts' instructions.

Section 838.101(b) states what is covered by these court order regulations. Four principal areas are covered. The first area is the requirements that a court order must meet to enable us to process the court order without any adjudicatory role for OPM, that is, making OPM's function merely a ministerial act. The second area is the procedures that the former spouse must follow to apply for benefits based on a court order. The third area is the procedures that OPM will follow in executing court orders and in making payments based on court orders. The procedures cover how we handle applications based on court orders and the limitations that we must apply in executing court orders. The final area is the meanings assigned to words and phrases commonly used in court orders to provide notice of the effect that these

terms will have if used in a court order. With this notice, we must assume that courts use these terms with a full understanding of their regulatory definition, making terms that could otherwise be ambiguous, completely clear and precise, thereby allowing us to process the court order as a ministerial act.

Section 838.101(c) provides the rule for determining whether we will process a court order under the new regulations. We must retain the old CSRS regulations for court orders filed before the new regulations begin to apply to preserve the legitimate expectations of people who filed court orders that were drafted in reliance on the current regulations. We have thousands of court orders on file that, under the current regulation, we are holding without decision until benefits become payable. The acceptability of these court orders must be judged under the regulatory standards in effect at the time that they were filed. Applying the new, more stringent standards of these regulations to them would be unfair to the employees and former spouses who obtained the court orders in good faith.

The delay before the new regulations become effective is necessary to give the public, especially the legal community, notice of the new requirements and standards that apply to court orders affecting CSRS or FERS benefits and to provide an adjustment period before those requirements and standards apply. We must assume that State courts and attorneys involved with divorces of Federal employees and retirees will become thoroughly familiar with the requirements and terminology in the regulations. We do not wish to require the parties to return to court unnecessarily. The delayed effective date provides time for the effective dissemination of this information.

Section 838.102 provides a guide to finding regulations that relate to court orders. Paragraph (a) outlines the structure of part 838. Subpart A contains definitions and other material of significance to all types of court orders affecting CSRS and 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 when benefits are paid. The subparts (C, E, and H) regulating requirements that court orders must satisfy contain 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.

Paragraphs (b) through (i) of § 838.102 contain cross references to other regulations concerning court orders or former spouse benefits. This information may assist people doing research.

Section 838.103 contains definitions of terms. These definitions apply to subparts A through I. Subpart J (for orders filed before the new requirements and procedures become applicable) contains its own definitions. Most of the definitions are the same as used in the current CSRS regulations. As explained in the section of the Supplementary Information entitled "Changes Having Broad Application," the term "court order acceptable for processing" replaces "qualifying court order," and "employee annuity" and "refund of employee contributions" replace "employee retirement benefits."

The definition of "net annuity" is changed to exclude from "net annuity" amounts withheld for State income taxes under section 8345(k) or section 8469 of title 5, United States Code to the same extent that current regulations exclude amounts withheld for Federal income tax. "Net annuity" has two applications. First, "net annuity" is the maximum amount of employee annuity that a State court can award to a former spouse. "Net annuity" is also one of the three types of annuity that may be used to satisfy the requirements of § 838.306 for identifying the type of annuity to which a formula, percentage, or fraction applies. The other two types, "gross annuity" and "self-only annuity" are also defined in section 838.103. Those definitions are essentially the same as under the current regulations.

Section 838.111 states the general statutory exemption from legal process under section 8346(a) or section 8470 of title 5, United States Code. Neither CSRS or FERS benefits are subject to State court orders except when expressly authorized by Federal statute. These regulations (part 838) contain the regulations for the exceptions that permit State court orders under section 8345(j), section 8341(h), section 8467, or section 8445 of title 5, United States Code. Part 581 of title 5, Code of Federal Regulations, regulates the exception for garnishments for alimony and child support under sections 659, 661, and 662 of title 42, United States Code.

Sections 838.121 through 838.124 state the responsibilities of everyone affected by the process. OPM's role is limited to the ministerial function of complying with court orders that meet the statutory and regulatory requirements. The State court is the proper forum for resolving all disputes over the validity or the effect of court orders. The court is also responsible for issuing orders that conform to the statutory and regulatory requirements. The former spouse must comply with the application requirements of these regulations. The person who worked under CSRS or FERS and the former spouse must submit all their disputes concerning entitlement to benefits to the appropriate State court for resolution.

Section 838.131 contains rules for computing the timeliness throughout part 838. Paragraph (a) provides that the normal CSRS and FERS rules for computing timeframes apply under part 838. Paragraph (b) provides rules for determining the date when OPM receives a court order. The date of receipt may be important for determining whether the order is controlled by subparts A through I or subpart J, the timeliness of filing, or the commencing date of benefits. The methodology for determining the date of receipt is similar to the methodology applicable to determining the date of service of process for garnishments under subpart B of part 581 of title 5, Code of Federal Regulations.

Section 838.132 states the statutory payment schedule for CSRS and FERS annuity benefits under sections 8345(a) and 8463 of title 5, United States Code, respectively. We are required by statute to pay CSRS and FERS annuity benefits on the first business day of the month after the month in which the benefits accrue. State courts have no authority to alter this payment schedule.

Section 838.133 continues the rule under section 831.1713(b) of title 5, Code of Federal Regulations, and Guidelines I.G of appendix A and III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that provides that the minimum monthly amount

payable under a court order is one dollar. This section discontinues the provision in the current regulation that requires that the former spouse's share of employee annuity be rounded to the nearest whole dollar. Although the gross amount of an employee annuity is always in whole dollars, the amount paid to the employee after deductions usually is not. Rounding the former spouse benefit to the nearest dollar appears to serve no useful purpose.

Section 838.134 states the order of precedence for honoring court orders when we receive more than one court order affecting one employee or retiree. This section does not change the current rules. Except for court orders that make prohibited modifications of survivor annuity provisions (i.e., modifications that are ineffective under sections 8341(h)(4) and 8445(d) of title 5, United States Code), the last court order concerning any former spouse supersedes all earlier court orders affecting that former spouse. For cases involving more than one former spouse, the court order issued first has priority. Section 838.134(c) provides the rules that we will follow if the employee or retiree and the former spouse obtain conflicting court orders. The rules for determining which court order we must follow provide that we will honor the determination by courts of the employee's domicile (as shown by our records) in preference to the courts of any other jurisdiction and we will honor a later determination in preference to an earlier one. The former is appropriate because the courts of the employee's or retiree's domicile have the best claim to jurisdiction over his or her property, including the employee annuity. The latter is appropriate because the latest court order is presumably issued with knowledge of all earlier court orders and is intended to supersede them.

Section 838.135 eliminates the former spouse's option under § 831.1718 of title 5, Code of Federal Regulations, to have us honor an agreement between an employee or retiree and the former spouse that gives the former spouse a smaller portion of the employee's or retiree's benefits than the former spouse would receive under the court order. The current regulation should be changed because it is inconsistent with OPM's role of merely following the court instructions. If the employee or retiree and the former spouse agree on an amount other than the one that we determine must be paid in accordance with these regulations based on the terms of the court order, they must obtain an amended court order acceptable for processing to change the amount.

Subpart B regulates the procedures that apply to former spouse's applications and our processing of court orders directed at employee annuities. The distinctions among procedures, requirements and terminology are discussed in connection with § 838.102. Section 838.201 lists the topics covered by subpart B and contains cross references to related regulations.

Section 838.211 regulates when a former spouse's share of employee annuity becomes available for payment and the maximum amount payable to a former spouse. These rules are unchanged from the current regulations, §§ 831.1706 and 841.905 of title 5, Code of Federal Regulations.

Section 838.211(c) regulates when a court order prevents a retiree from waiving his or her annuity under section 8345(d) or 8465(a) of title 5, United States Code. Our rule has always been that waiver is permitted until the court order has affected the annuity. Under CSRS, the court order affects an annuity only after expiration of the 30-day notice period during which the retiree can file an objection to give reasons that OPM should not honor the court order. Accordingly, § 831.1706(b) of title 5, Code of Federal Regulations, ends the right to waive at the end of the 30-day notice period. Under FERS and the proposed regulations, the court order affects the annuity when we receive the court order. Accordingly, § 841.905(b) of title 5, Code of Federal Regulations, and § 838.221(c) terminate the right to waive the employee annuity at that time.

Section 838.221 states the application requirements that a former spouse must meet. The requirements are the same as the current FERS requirements under § 841.905 of title 5, Code of Federal Regulations. The only difference from the CSRS requirements under § 831.1705 of title 5, Code of Federal Regulations, is that the former spouse must provide the employee's mailing address if the court order affects the benefits of someone who is still an employee. Under the CSRS regulations, we do not process court orders until benefits become payable. Under the current FERS regulations and the proposed regulations, we need the employee's mailing address because we process the court order upon receipt. In processing a court order, we send information to the employee.

Sections 838.222 and 838.223 provide procedures for our processing of court orders. The procedures eliminate the delays in payments to the former spouse and streamline our handling of court orders. The regulations state the information that OPM will provide to the employee or retiree and the former spouse affected by a court order. Section 838.222(d) provides that payments to the former spouse and withholding from the employee annuity will begin on time, even if the information is not provided to the retiree before the annuity withholding begins.

Section 838.224 provides procedures that the employee or retiree must follow to dispute the validity of the court order. The burden is on the employee or retiree to obtain a court order invalidating the court order submitted by the former spouse. The proper forum for deciding issues relating to the validity of court orders is the courts, not Federal administrative proceedings. Paragraphs 838.224 (a) and (b) require the retiree to submit all challenges to the validity of a court order to the court for adjudication.

Section 838.225 regulates processing amended court orders. Amended court orders are processed as new court orders. Paragraph (b) clarifies the rule for collection of amounts past due or correcting excessive payments under § 831.1711(a)(2) or § 841.910(b)(1) of title 5, Code of Federal Regulations. To have OPM collect an arrearage or correct for excessive payments the court order must expressly tell us to take that action, tell us the total amount of the adjustment, and tell us how much of the adjustment should be made each month.

Section 838.231 regulates the commencing date of payments to the former spouse. Section 838.231(a) provides that the former spouse's share of an employee annuity begins to accrue on the first day of the second month after we receive a court order acceptable for processing. The statute does not provide a commencing date. This commencing date corresponds to the earliest commencing date permitted by statute for a survivor annuity based on a court order under sections 8341(h)(3)(A) and 8445(c)(1) of title 5, United States Code. This commencing date is the same as is used in the current FERS regulations under § 841.910(b)(2) of title 5, Code of Federal Regulations.

Section 838.231(b) regulates the commencing dates of accrual and payment of the former spouse's share of an employee annuity when the former spouse submits an incomplete application. Former spouses frequently submit copies of court orders that do not bear original court certifications, and therefore, do not satisfy the requirements of § 838.221. We also receive applications lacking other documents required by that section for proving validity of the court order.

Section 838.231(b) provides that the only document necessary to begin accrual of the former spouse's share of the employee annuity is a copy of the court order, even if that copy is not an original court certified copy. However, we cannot pay accrued benefits to the former spouse until we have received all the required documentation. If necessary, we will make a retroactive payment to the former spouse covering annuity that accrued after we receive a copy of the court order but prior to our receipt of all necessary documentation.

Section 838.232(a) restates the requirement under § 831.1713(d) or § 841.912(b) of title 5, Code of Federal Regulations, that we must suspend a former spouse's share of an employee annuity if the employee annuity is stopped. Section 838.232(b) provides an exception to the suspension requirement to curb abuses by retirees.

Section 838.233 regulates the termination of the former spouse's share of an employee annuity. It does not change current practice. Paragraph (a) provides for termination in accordance with the terms of the court order. Paragraph (b) provides for termination as soon as possible after we receive a court order invalidating the court order submitted by the former spouse. If we receive the court order at least 20 days before the end of the month we generally can stop the next check (which is for annuity accruing during the month in which we received the court order). If we receive the court order when there are fewer than 20 days left in the month, we will not stop the check for the month in which we receive the court order, but the former spouse's share of the employee annuity will cease accruing at the end of that month. Paragraph (c) provides that a court order becomes ineffective when an amended court order that supersedes it becomes effective. Paragraph (d) provides that if the retiree dies, the former spouse's share stops when annuity to the retiree stops, effective at the end of the month before death. No Federal statute gives State courts any authority over accrued, unpaid annuity that would have been due the retiree for the part of the month in which the retiree dies. We must pay it in accordance with the order of precedence in section 8342 or section 8424 of title 5, United States Code. For cases in which the former spouse predeceases the retiree, paragraph (e) provides that unless the court order expressly provides otherwise, accrual of the former spouse's share ceases at the end of the month before the former spouse dies.

Section 838.234 provides the special requirements applicable to a court order that directs us to collect an arrearage. The special requirement is discussed in connection with § 838.225.

Section 838.235 states how we will pay lump-sum awards from employee annuity. If the court specifies the monthly rate of payment, we will use that rate. Otherwise, we will withhold at the rate of 50 percent of the gross annuity at the time that payments start. Payments will continue at the same rate until the lump sum has been paid.

No Federal statute authorizes State courts to delay or stop annuity payments. We are required by sections 8345(a) and 8463 of title 5, United States Code, to pay employee annuity monthly. Sections 8345(j) and 8467 of title 5, United States Code, authorize State courts in certain situations to direct payment to someone other than the retiree but not to stop payments. Section 838.236 states this statutory prohibition against court orders seeking to stop payments that we are required to make.

Section 838.237 changes the procedures that we will follow upon the death of the former spouse. Currently, § 831.1712 of title 5, Code of Federal Regulations, requires us to contact the State court when the former spouse dies. At that time, we request the State court to provide additional instructions for the disposition of the former spouse portion of the employee annuity. Only a court order issued after the death of the former spouse meets the requirements of the current regulation. Section 838.237 changes our approach to eliminate our involvement in the process. We will no longer solicit additional instructions from the court or require an after-death court order to resolve entitlement. Unless that court order includes express instructions telling us what to do with the former spouse's share of the employee annuity when the former spouse dies, the former spouse's share reverts to the employee upon the death of the former spouse. The limitations on whom we will pay after the death of the former spouse that currently exist under § 831.1712 of title 5, Code of Federal Regulations, would continue under § 838.237.

Section 838.241 states that we add cost-of-living adjustments to annuities in accordance with section 8340 or section 8462 of title 5, United States Code. If the court wants us to apply a different rate or add them at a different time, the court order must include specific instructions.

Section 838.242 states the current rules that we use to calculate lengths of service in evaluating formulas used in a court order. The current rule is in guidelines I.A and I.C of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Our policy not to compute lengths of time smaller than months is based on section 8332 of title 5, United States Code, that allows credit for service for years or twelfth parts thereof. We will not honor requests that we calculate smaller units of time.

Section 838.243 duplicates the minimum amount of a former spouse's share of employee annuity requirement established in § 838.133 of these regulations.

Subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing. Each section is structured to exclude court orders that do not satisfy the requirements of that section. This structure is designed to allow us to point to specific regulatory language that expressly states that a court order that does not contain a necessary provision is not acceptable for processing. Unless a specific regulation declares a court order not acceptable, the court order is acceptable for processing.

Section 838.302 clarifies that court orders that contain language that make it impossible for us to process the court order while maintaining our ministerial role are not acceptable for processing. Section 838.302(a) defines as unprocessable all court orders labeled "qualified domestic relations order" or issued on ERISA forms. Such a court order demonstrates on its face that the court does not understand that CSRS and FERS are not covered by ERISA. More importantly, the court order itself proves that our necessary presumption that the court is familiar with these regulations and that the court used the terms defined by these regulations intending those terms to have the meaning assigned by these regulations is incorrect. Accordingly, we cannot process such a court order.

Section 838.302(b) also defines as unprocessable court orders that attempt to award a former spouse a portion of an employee annuity that continues after the death of the employee. Our system provides only two types of benefits, employee annuities that are payable to the employee and terminate at the employee's death and survivor annuities that are payable to the employee's survivors after the employee's death. Sections 8345(j) and 8467 of title 5, United States Code, permit a State court to redirect payments that would otherwise be made to a former employee to a former spouse, but our system does not allow the State court to partition the employee

annuity to create a separate annuity that can continue independent of the employee's continued entitlement to the employee annuity. Only a survivor annuity can continue after the death of the employee.

Our current guidelines provide that unless the court order clearly and specifically provides that it is awarding an annuity that begins after the death of the employee or retiree, rather than a continuation of the former spouse's share of the employee annuity—a continuation not authorized by statute—the court order is not acceptable. How that distinction affects the use of these regulations is discussed in the section of this supplementary information concerning preparing a court order. This approach is justified for a number of reasons. Continuing the spouse's portion of an employee annuity after the death of the employee is a product of ERISA which permits a permanent partition of an employee annuity. As previously discussed, CSRS and FERS are exempt from ERISA and do not permit partition of an employee annuity. Our statutes only permit payment that would otherwise be made to a former employee to be redirected to the former spouse. We must also be assured that the court understood that the award of a survivor benefit results in a reduction of the employee's annuity. A court order that implies that partition of an employee annuity is permitted demonstrates that the court is not familiar with the requirements of these regulations. Thus, we must be able to rely on familiarity to make our function of executing court orders in accordance with these regulations ministerial.

We have, in the past, interpreted language that attempted to award the former spouse a portion of the employee annuity that would continue after the death of the employee as providing a portion of the employee annuity that terminates at the employee's death. However, such an interpretation would not be consistent with our limited ministerial role under these regulations. The number of court orders affected by this provision should be negligible.

Section 838.303 requires that the court order identify the retirement system and state that the former spouse is entitled to a portion of the employee annuity. This requirement is derived from current regulations, §§ 831 1704(a) and 841.903(b) of title 5, Code of Federal Regulations.

Section 838.304 changes the current rule on the degree of specificity required for a court order to direct us to pay the former spouse s share of an employee annuity directly to the former spouse. Under current CSRS regulations (§ 831.1704(b) of title 5, Code of Federal Regulations), we will pay the former spouse if the court order directs us to pay, or if the court order is neutral concerning the source of payment, or if the court order directs the retiree to pay and the retiree does not object to our paying directly. Under the current FERS regulation (§ 841.903(b) of title 5, Code of Federal Regulations), we will pay the former spouse unless the court order expressly directs us not to pay the former spouse directly. Under both of these approaches, we acted in an adjudicatory role. Considering that most of the court orders that we currently accept are neutral concerning the source of payments and we do not wish to needlessly require former spouses to return to court to correct technical deficiencies in court orders, we will continue to accept court orders that are neutral concerning who is to make the payments. Nevertheless, we strongly recommend that court orders expressly direct OPM to pay the former spouse directly. Court orders that direct the retiree to pay the former spouse are not acceptable for processing.

Section 838.305 states the requirements for specifying how much of the employee annuity is payable to the former spouse. The section continues the current requirements of §§ 831.1704(b) and 841.903(b) of title 5, and guidelines I.C and VI of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, with one exception. The current guidelines (guideline VI.A.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations) provide one exception to the general rule that we "will not research, interpret, or apply State laws regarding community or marital property rights or divisions." The exception in current guidelines requires us to apply State law to determine whether disability retirement benefits are subject to division as marital property upon divorce. Section 838.305 abolishes that exception and applies the general rule to all court orders. Unless the court order expressly directs us not to apply it to an employee annuity based on disability, we will apply the court order to any employee annuity payable. If State law does not permit division of disability retirement benefits until the retiree reaches age 62, and the court wants OPM to follow the State rule, the court order must state that it does not apply to disability retirement benefits until the retiree reaches age 62 and provide sufficient instruction for dividing the employee annuity after age 62.

Section 838.305 (b)(2) and (e) contain new material concerning the information that courts can expect us to locate in evaluating a formula. Both of these provisions arise from our concern about the types of salary rate information that will be available under the Federal Employees Pay Comparability Act of 1990, section 529 of Public Law 101-509, enacted November 5, 1990, especially, information about locality pay differentials under section 5305 of title 5, United States Code. Section 838.622(b)(2) contains a list of items that courts should feel comfortable in expecting us to evaluate. Courts should be wary about expecting us to evaluate variables that require us to find information not on the list. Section 838.622(e) provides that a court order is not acceptable for processing if it directs us to adjust the salary component of an annuity computation by an amount other than one of the four factors listed in the paragraph.

Section 838.306 provides that a court order that awards the former spouse a percentage or fraction of the employee annuity or gives us a formula for computing the amount of the former spouse's share of the employee annuity must use as a base for our computation the self-only, gross, or net annuity and must provide us with a way to tell which of these three types of annuity to use.

Subpart D regulates the procedures applicable to court orders directed at refunds of employee contributions. Its structure is similar to subpart B, which contains the corresponding rules for employee annuity. Sections 838.401, 838.411, 838.421, 838.423 through 838.425, and 838.441 correspond to §§ 838.201, 838.211, 838.221, 838.222 through 838.224 and 838.242, respectively.

Unlike annuities that are paid each month, refunds of employee contributions are paid only once and they extinguish any entitlement to a deferred annuity benefit. After the refund is paid, no funds are left to satisfy a court order.

Section 838.422 regulates the time limits for a former spouse to file an application for a court order to affect a refund of employee contributions. The time limits are the same as currently apply under § 831.2009 of title 5, Code of Federal Regulations. We must generally receive the court order no later than the last day of the second month before we pay the refund; however, if the former spouse indicates on the form for spousal notification of a refund application that he or she is submitting a court order, the court order is timely filed if we receive it no later than 20 days after we receive the form for spousal notification of a refund application.

Section 838.431 provides a remedy for former spouses who are harmed by not

receiving notice of an application for a refund of employee contributions. This section continues the current rule under § 831.2009(f) of title 5, Code of Federal Regulations.

Section 838.432 states the statutory requirement under sections 8342(j) and 8424(b) of title 5, United States Code, that a State court may prevent the payment of a refund of employee contributions only if a court order entitles the former spouse to a portion of the employee annuity or to a former spouse survivor annuity. The current regulation implementing that statute is § 831.2009(g) of title 5, Code of Federal Regulations.

As subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing, subpart E contains similar rules for court orders directed at refunds of employee contributions. Its structure is similar to subpart C. Sections 838.501, and 838.502 through 838.504 correspond to §§ 838.301, and 838.303 through 838.305, respectively.

Section 838.505 implements the statutory requirements for barring payment of a refund of employee contributions that are stated in section 8342(j) or section 8424(b) of title 5, United States Code. A court order can prohibit payment of a refund of employee contributions only if it awards a former spouse a portion of employee annuity, or a former spouse survivor annuity, that would be extinguished by payment of the refund of employee contributions.

Subpart F explains our understanding of terms frequently used in court orders directed at employee annuities or refunds of employee contributions and states whether use of the term will satisfy specific requirements of subpart C or subpart E. When we process court orders, we must assume that courts are familiar with the meanings assigned to the terms defined in this subpart and have used the terms in the way assigned by subpart F.

Section 838.611 contains information about provisions that attempt to identify the retirement system to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.611 continues the current rules under guideline V of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it affects CSRS or FERS benefits. Court orders that award benefits paid by agencies other than OPM, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit toward the benefit paid by OPM. This is necessary for two reasons. A practical reason is that we would not be able to compute benefits based on a retirement system administered by another agency. The legal reason is that no court order authorizes OPM to pay a portion of the retiree annuity to the former spouse.

Section 838.612 contains information about provisions used to identify employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.612 continues the current rules under guideline IV of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Paragraph (a) lists terms that are usually used to identify any type of retirement benefit actually paid. Although the literal meaning of some of the terms listed in paragraph (a), such as "pensions" or "annuities," would not include lump-sum distributions, such as refund of employee contributions, our experience has shown that these terms are broadly used to identify all retirement benefits payable. Accordingly, we will continue to accept these terms as affecting both employee annuities and refunds of employee contributions. Paragraph (b) lists terms used to describe lump-sum awards, that is, awards either of a specified amount that are usually based on the amount of the employee contributions (rather than on the amount of an employee annuity) or payable only from refunds of employee contributions.

Section 838.621 establishes a new term, "prorata share," for the most common type of formula used to divide retirement benefits. Court orders that use this term are instructing us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.622 contains information about cost-of-living and salary adjustments that can be altered by provisions in court orders. It continues the current rules under guidelines I.A and I.B of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.623 contains information about terms used in court orders that attempt to describe periods of service or tell us how to compute lengths of service for use in formulas. It continues the current rules under guidelines I.D, I.F, and III of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, except that the definition of "military service" has been changed to include periods of civilian employment with military agencies.

Under the current guidelines, "military service" excludes such periods of civilian employment "except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order." This change is necessary because exercising judgment to determine whether "the exclusion of such civilian service would be manifestly contrary to the intent of the court order," would be inconsistent with limiting our role in executing court orders to perform the ministerial function of carrying out the court's instructions. Our experience has shown that the court usually intends to include this civilian service in each element of the computation; therefore, we drafted the regulation to implement what has been the court's most likely intent. Again, we must assume that, unless the court provides its own definition, the court will use the term as we have defined it here.

Section 838.624 contains information about how we will treat court orders that contain inconsistent instructions for determining the amount of former spouse's share. It continues the current rules under guidelines I.E. and I.C.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.625 contains lists of terms that are synonymous with the types of annuity defined in § 838.103. The terms may be used to satisfy the requirements of § 838.306 of these regulations. Section 838.625 continues the current rules under guideline II of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Subpart G regulates the procedures applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart B that contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.701, 838.721 through 838.724, and 838.735 correspond to §§ 838.201, 838.221 through 838.224, and 838.241, respectively.

Section 838.711 states the statutory maximum amount that we may pay as a former spouse survivor annuity. The total of all monthly survivor annuities payable to the widow or widower and all former spouses (except for the former spouse survivor annuities authorized by section 4(b) of CSRSEA) may never exceed 55 percent of the employee annuity under CSRS or 50 percent of the employee annuity under FERS. The definition of former spouse survivor annuity in § 838.103 includes the basic employee death benefit as defined in § 843.102 of title 5, Code of Federal Regulations.

Section 838.725 states the statutory provision in section 8341(h)(4) or section 8445(d) of title 5, United States Code, declaring ineffective court orders that, after the employee retires or dies, modify any provision in a court order concerning a former spouse survivor annuity. This subject is covered in more detail by § 838.806.

Section 838.726 establishes as a regulation for the first time our existing policy for handling employee and retiree election rights in cases in which a former spouse is entitled to a former spouse survivor annuity. It provides that court orders affect our authority to pay benefits based on employee elections but do not affect the employee or retiree's rights to make survivor annuity elections. For example, a married employee who at the time of retirement has a former spouse who is entitled to the maximum former spouse survivor annuity by court order must elect (under § 831.604 or § 842.604 of title 5, Code of Federal Regulations) a reduced annuity to provide a current spouse survivor annuity to the spouse at the time of retirement unless that spouse consents to a different election. The employee annuity is reduced based on the court order that awards the former spouse survivor annuity. No additional reduction is necessary based on the election for the spouse at retirement because that spouse will not receive a benefit as long as the former spouse's entitlement under the court order continues. The benefit for the current spouse is discussed under § 838.733.

Sections 838.731 and 838.732 implement statutory requirements under section 8341(h)(3) or section 8445(c) of title 5, United States Code, for commencing and terminating former spouse survivor annuities.

Section 838.733 establishes as a regulation for the first time our existing policy for determining the rights of a current spouse as defined in §§ 831.603 or 842.602 of title 5, Code of Federal Regulations, for whom the retiree elected a reduced annuity to provide a survivor annuity, or a former spouse with a court order that cannot be honored because of a higher priority court order when a former spouse with entitlement to a former spouse survivor annuity by court order loses that entitlement. If the former spouse loses entitlement while the retiree is living, the annuity reduction would automatically continue to provide a survivor annuity to the current spouse or other former spouse. If the former spouse loses entitlement after the death of the retiree, the spouse at retirement (if he or she qualifies as a widow or widower) or other former spouse would begin to receive a survivor annuity after the former spouse loses entitlement.

Section 838.734 states the rule that OPM will not honor court orders that award lump-sum payments (other than the FERS basic employee death benefit) to a former spouse upon the death of an employee or retiree.

Subpart H regulates the requirements applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart C, which contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.801, 838.803, and 838.805 correspond to §§ 838.301, 838.302, and 838.305, respectively.

Section 838.802 states the statutory requirements under CSRS that a court order may award a former spouse survivor annuity only if the marriage terminated on or after May 7, 1985, and, if the retiree retired before May 7, 1985, the former spouse was the beneficiary of a reduced annuity to provide a current spouse survivor annuity on May 7, 1985. These requirements result from section 4(a)(1) of CSRSEA, which controls the effective date of section 8341(h) of title 5, United States Code, the statutory authority for State court orders that award former spouse survivor annuities.

Section 838.804 states the requirement that a court order must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity. This continues the current requirement of § 831.1704(d) of title 5 and guideline II of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Sections 838.303 and 838.304 are the corresponding sections applicable to employee annuity.

Section 838.806 contains the special requirements applicable to an amended court order. Sections 8341(h)(4) and 8445(d) of title 5, United States Code, do not allow us to accept court orders that contain modified provisions affecting survivor annuities if the modification is issued after the retirement or death of the employee. We explained these statutory provisions in detail (at 53 FR 29057, August 2, 1988, and 53 FR 46895, December 5, 1988) when we issued §§ 831.1704(e) and 841.903(d) of title 5, Code of Federal Regulations. Section 838.806 continues to treat as prohibited modifications the same amended court orders that were prohibited under §§ 831.1704(e) and 841.903(d). In addition, § 838.806 establishes standards for determining whether orders that vacate or set aside divorces are pretexts for evading the statutory prohibition against modification.

Section 838.807 states the current requirement under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the cost of providing the survivor annuity must be taken from the employee annuity or the former spouse's share of the employee annuity. If the court order directs us to take the cost from the former spouse's share of the employee annuity and the former spouse's share of the employee annuity is sufficient to pay the entire cost, we will take the cost from the former spouse's share of the employee annuity. Otherwise, the entire cost to provide the former spouse survivor annuity must be taken from the employee annuity in accordance with section 8339(j) or section 8417(a) of title 5, United States Code.

Subpart I explains our understanding of terms frequently used in court orders awarding former spouse survivor annuities and states whether use of the terms will satisfy specific requirements of subpart H. When we process a court order, we must assume that the court is familiar with the meanings assigned the terms defined in this subpart and have used the terms in the way assigned by this subpart.

Section 838.911 is similar to § 838.611 in most respects. It sets a similar standard for provisions in court orders that attempt to identify the retirement system to satisfy the requirements of § 838.804 of these regulations. The only noteworthy difference is the effect that we accord the term "maintain." We treat a provision in a court order that requires a retiree to "maintain" the survivor annuity coverage that the former spouse had prior to the divorce as sufficient to identify our benefits if the former spouse would have been entitled to a survivor annuity as the widow or widower except for the divorce. For example, in the case of a post-retirement divorce, the retiree must have elected to provide a survivor annuity for the spouse. Section 838.911 continues the current rules under guidelines II and III.A of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it awards survivor annuity benefits paid by OPM. Court orders that award survivor annuity benefits paid by other agencies, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit from the other benefit to be counted toward the benefit paid by OPM.

Section 838.912 corresponds to § 838.612 in the sense that it contains information about provisions used to identify former spouse survivor annuities to satisfy the requirements of § 838.804 of these regulations, just as § 838.612 contains information about provisions concerning employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. However, as under current rules, the standards for identifying survivor annuities are stricter than the standards for identifying employee annuities or refunds of employee contributions. Section 838.912 continues the current rules under guidelines I and III.B of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Also, if the court order awards the former spouse a survivor annuity under the statute authorizing survivor annuities to a person with an insurable interest in certain retirees, applicable statutes do not authorize us to comply with the court order. As in § 838.611, the term, "maintain" is accorded special significance if the former spouse is covered prior to the divorce.

Section 838.921 contains information about terminology used to describe the amount of a former spouse survivor annuity. Paragraph (a) continues the current rule under guideline III.E of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that award a former spouse survivor annuity, but do not contain express instructions for determining the amount of the former spouse survivor annuity, award the maximum amount available. Paragraph (b) continues the current rule under guideline III.D of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The rule is that a court order that provides that the former spouse will keep or that the retiree will maintain the survivor annuity to which the former spouse was entitled before divorce awards a former spouse survivor annuity in the same amount as the former spouse had at the time of divorce. Paragraph (c) restates the rule under guideline III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the minimum former spouse survivor annuity is $1 per month and that cost of living increases must be added to survivor annuities. Paragraph (d) continues the current rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that a court order may authorize a reduction in the amount of a former spouse survivor annuity based on a retiree's election to provide a survivor annuity for a new spouse because the election is an event that will be documented in normal OPM files, but a court order may not authorize a reduction in the amount of a former spouse survivor annuity based on an employee's or retiree's remarriage because the remarriage is not an event that will be documented in normal OPM files. As under the current guideline, only the reduction opportunity is nullified; we treat the court order as awarding a former spouse survivor annuity because that is the probable intent of the court.

Section 838.922 establishes the new term, "prorata share," for the most common type of formula used to divide survivor annuity benefits, as § 838.621 did for court orders dividing employee annuities. Court orders that use this term instruct us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.931 continues our current practice, which has not previously been included in the regulations, concerning a divorce decree that provisionally awards a former spouse survivor annuity until further order of the court can be acceptable. Such a court order provides a survivor annuity until the court issues a court order acceptable for processing that changes it. However, if the new court order is issued after the employee retires or dies, it cannot effectively change or terminate the provisional award. If the divorce occurs after the employee retires, section 8341(h) or section 8445 of title 5, United States Code, does not permit us to accept a court order changing or terminating the provisional award. Effectively, that makes the provisional award permanent.

Section 838.932 changes the rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders cannot authorize former spouses to exercise a right to elect a former spouse survivor annuity. The current guideline, under which the election right is nullified and the court order is treated as unequivocally awarding a former spouse survivor annuity, deviates farther than necessary from the instructions of the court. Under § 838.932, a court order providing for such an election awards a former spouse survivor annuity until the former spouse notifies OPM otherwise in a form prescribed by OPM. If the former spouse elects no survivor annuity, the election is irrevocable. A former spouse's election of no survivor annuity under this provision is effective and the employee annuity will be restored to the unreduced rate (unless a reduction is still required as a result of another court order or the retiree's election) effective on the first day of the month after OPM receives the election.

Section 838.933 contains information about terminology used to describe the source of payment of the cost of a former spouse survivor annuity. It continues the current rule under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that unequivocally award former spouse survivor annuities and direct the former spouse to pay the costs are acceptable to award a former spouse survivor annuity but the cost must be paid in accordance with § 838.807 of these regulations. On the other hand, court orders that award a former spouse survivor annuity conditioned upon the former spouse paying the cost are not acceptable unless the former spouse is also entitled to a sufficient portion of the employee annuity to cover the cost.

Subpart J contains the current CSRS regulations that will continue to apply to court orders that are currently on file and that we receive prior to January 1, 1993.

Paperwork Reduction Act

The information collection requirements contained in §§ 838.221, 838.421, and 838.721 have been submitted to the Office of Management and Budget for approval in accordance with the requirements of the Paperwork Reduction Act. It is estimated that there will be approximately 7000 responses annually, with an estimated average burden of 6 minutes per response, for a total annual burden of 700 hours. Comments regarding these proposed collections of information through the letters of application should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Joseph Lackey, Desk Officer for the Office of Personnel Management. Comments should be received on or before March 3, 1992. All other comments should be sent to OPM as instructed above under "ADDRESSES."

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, and 843

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.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

1. Part 838 is added to read as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

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.

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.

Application and Processing Procedures

838.221 Application requirements.
838.222 OPM action on receipt of a court order acceptable for processing.
838.223 OPM action on receipt of a court order not acceptable for processing.
838.224 Contesting the validity of court orders.
838.225 Processing amended court orders.

Payment Procedures

838.231 Commencing date of payments.
838.232 Suspension of payments.
838.233 Termination of payments.
838.234 Collection of arrearages.
838.235 Payment of lump-sum awards.
838.236 Court orders barring payment of annuities.
838.237 Death of the former spouse.

Procedures for Computing the Amount Payable

838.241 Cost-of-living adjustments.
838.242 Computing lengths of service.
838.243 Minimum amount of awards.

Subpart C—Requirements for Court Orders Affecting Employee Annuities

838.301 Purpose and scope.
838.302 Language not acceptable for processing.
838.303 Expressly dividing employee annuity.
838.304 Providing for payment to the former spouse.
838.305 OPM computation of formulas.
838.306 Specifying type of annuity for application of formula, percentage or fraction.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

838.401 Purpose and scope.

Availability of Funds

838.411 Amounts subject to court orders.

Application and Processing Procedures

838.421 Application requirements.
838.422 Timeliness of application.
838.423 OPM action on receipt of a court order acceptable for processing.
838.424 OPM action on receipt of a court order not acceptable for processing.
838.425 Contesting the validity of court orders.

Payment Procedures

838.431 Correcting failures to provide required spousal notification.
838.432 Court orders barring payment of refunds.

Procedures for Computing the Amount Payable

838.441 Computing lengths of service.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

838.501 Purpose and scope.
838.502 Expressly dividing a refund of employee contributions.
838.503 Providing for payment to the former spouse.
838.504 OPM computation of formulas.
838.505 Barring payment of refunds.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

838.601 Purpose and scope.

Identification of Benefits

838.611 Identifying the retirement system.
838.612 Distinguishing between annuities and contributions.

Computation of Benefits

838.621 Prorata share.
838.622 Cost-of-living and salary adjustments.
838.623 Computing lengths of service.
838.624 Distinguishing between formulas and fixed amounts.
838.625 Types of annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.701 Purpose and scope.

Limitations on Survivor Annuities

838.711 Maximum former spouse survivor annuity.

Application and Processing Procedures

838.721 Application requirements.
838.722 OPM action on receipt of a court order acceptable for processing.
838.723 OPM action on receipt of a court order not acceptable for processing.
838.724 Contesting the validity of court orders.
838.725 Amended court orders.
838.726 Effect on employee and retiree election rights.

Payment Procedures

838.731 Commencing date of payments.
838.732 Termination of entitlement.
838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.
838.734 Payment of lump-sum awards by survivor annuity.
838.735 Cost-of-living adjustments.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

838.801 Purpose and scope.
838.802 CSRS limitations.
838.803 Language not 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.
838.805 OPM computation of formulas in computing the designated base.
838.806 Amended court orders.
838.807 Cost must be paid by annuity reduction.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.901 Purpose and scope.

Identification of Benefits

838.911 Identifying the retirement system.
838.912 Specifying an award of a former spouse survivor annuity.

Computation of Benefit

838.921 Determining the amount of a former spouse survivor annuity.
838.922 Prorata share defined.

Miscellaneous Provisions

838.931 Court orders that provide temporary awards of former spouse survivor annuities.
838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.
838.933 Payment of the cost of a former spouse survivor annuity.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

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 July 1, 1992.

(2) Subpart J of this part applies only to court orders received by OPM before July 1, 1992.

§ 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 July 1, 1992.

(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 8424(h) of title 5, United States Code.

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 or 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 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 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 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 court 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.

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 of a court order acceptable for processing on employee annuities.

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 use 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 to 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 later 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 former spouse'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 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.

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 Order 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) 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.

(b) 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 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 spouses'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, 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 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 § 831.2007(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; 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; 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.

(2) *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 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 COLA's after the date of the employee's retirement in the manner described in § 838.241.

(ii) To award COLA's 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 COLA's occurring between the specified date and the date of the employee's retirement.

(iii) To prevent the application of COLA's 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 COLA's 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 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 for 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.

Table of Contents

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.
¶ 102–110 [Reserved].
¶ 111 Protecting a former spouse entitled to military retired pay.

200 Series—Computing the Amount of the Former Spouse's Benefit

¶ 201 Award of a fixed monthly amount.
¶ 202 Award of a percentage.
¶ 203 Award of a fraction.
¶ 204 Award of a prorata share.
¶ 205–210 [Reserved].
¶ 211 Award based on a stated formula.
¶ 212–230 [Reserved].
¶ 231 Awarding COLA's on fixed monthly amounts.
¶ 232 Excluding COLA's on awards other than fixed monthly amounts.

300 Series—Type of Annuity

¶ 301 Awards based on benefits actually paid.
¶ 302–310 [Reserved].
¶ 311 Awards of earned annuity in cases where the actual annuity is based on disability.

400 Series—Refunds of Employee Contributions

¶ 401 Barring payment of a refund of employee contributions.
¶ 402 Dividing a refund of employee contributions.

500 Series—Death of the Former Spouse.

¶ 501 Full annuity restored to the retiree.
¶ 502 Former spouse share paid to children.
¶ 503 Former spouse share paid to the court.

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 Benefit.

Paragraphs 201 through 204 contain model language for the most common types of awards 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 add 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 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 [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 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 [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—Types 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 death 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 and 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 and 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 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 of Survivor Annuities

§ 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payment 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 spouses 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 that 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 employees annuity or the commencing date of the former spouse 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 Amended court orders.

OPM will not honor an amended court order that awards, increases, reduces, or eliminates a former spouse survivor annuity unless the amended court order is issued by the court on a day before the date of retirement or the date of death of the employee or separated employee.

§ 838.726 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 support 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 the 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 adjustment 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) 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.

(b) 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 § 838.802; 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 terminating the marital relationship between 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 terminating the marital relationship between 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 terminating the marital relationship between 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 or 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) In this section, the *first order terminating the marital relationship between the retiree and the former spouse* means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(1) 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

(2) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the court order terminating the marriage) 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 the 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 retiree 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 expect 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 the 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 CSRS 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.

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 § 838.804(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 receives 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.

Table of Contents

700 Series—Computing the Amount of the Former Spouse's Benefit

¶ 701 Award of the maximum survivor annuity.
¶ 702 Award that continues the pre-divorce survivor annuity benefits.
¶ 703 Award of a prorate share.
¶ 704 Award of a fixed monthly amount.
¶ 705–710 [Reserved].
¶ 711 Award of a percentage or fraction of the employee annuity.
¶ 712 Award based on a stated formula as a share of employee annuity.
¶ 713–720 [Reserved].
¶ 721 Award of a percentage or fraction of the maximum survivor annuity.
¶ 722 Award based on a stated formula as a share of maximum survivor annuity.
¶ 723–750 [Reserved].
¶ 751 Changing amount of former spouse survivor annuity based on remarriage before retirement.
¶ 752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

800 Series—Paying the Cost of a Former Spouse Survivor Annuity

¶ 801 Costs to be paid from the employee annuity.
¶ 802 Costs to be paid from former spouse's share of the employee annuity

900 Series—Refunds of Employee Contributions

¶ 901 Barring payment of a refund of employee contributions.
¶ 902 Dividing a refund of employee contributions.

700 Series—Computing the Amount of the Former Spouse's Benefit

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 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 data 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 prorata 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 exceed 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 begun, COLA's will be applied in accordance with section 838.735.

"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."

¶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 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 of 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 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 date]."

¶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 may be 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 date]."

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 section 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 may be reduced to pay the cost.

¶ 801Costs 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 as 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' 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 consisting of §§ 831.1701 through 831.1718 and appendices A and B are redesignated as subpart J of part 838, §§ 838.1001 through 838.1018 and appendices A and B of subpart J, respectively.

3. Newly redesignated § 838.1001 is removed and reserved; newly redesignated § 838.1010 is removed; and § 831.2009 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. 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.

§§ 838.1003, 838.1004, 838.1006, 838.1007, 838.1009, 838.1010, 838.1011, 838.1016 Appendix A to Subpart J, Appendix B to Subpart J [Amended]

6. In the list below, for each section and paragraph indicated in the left two columns, remove the section 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
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	8381008.
838.1006	(b)	831.1708	8381008.
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 A to subpart J	III.G.	831.1704(b)	838.1004(b).

§§ 838.1002, 838.1003, 838.1006, 838.1007, 838.1009, 838.1010, 838.1016 [Amended]

7. 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

8. 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); § 831.204 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; § 831.303 also issued under sec. 7001(b) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964-1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99-251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100-203; § 831.2203 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

9. In section 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 Q—[Removed and reserved]

10. The heading for subpart Q "Court Orders Affecting Retirement Benefits" of part 831 is removed and the subpart is reserved.

Subpart V—Alternative Forms of Annuity

11. 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 may not elect an alternative form of annuity.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

12. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a; Subpart D also issued under 5 U.S.C. 8423; Section 841.504 also issued under 5 U.S.C. 8422; Section 841.507 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

13. 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 section 838.103 of this chapter.

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

14. Subpart I of part 841 is removed and reserved.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

15. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Section 842.105 also issued under 5 U.S.C. 8402(c)(1); Section 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; section 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

16. 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

17. 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 may not elect an alternative form of annuity.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

18. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; Sections 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

19. In § 843.102, the definition of "qualifying court order" is revised to read as follows:

§ 843.102 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.

* * * * *

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federal register

Thursday
January 2, 1992

Part V

Department of Education

Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects); Demonstration Projects; Notice

DEPARTMENT OF EDUCATION

Demonstration Projects for the Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects)

AGENCY: Department of Education.

ACTION: Notice of proposed priority, selection criteria, and other requirements for grants to be made in fiscal year 1992.

SUMMARY: The Secretary proposes to establish a priority for a grant competition for awards to be made in Fiscal Year (FY) 1992 using funds appropriated in FY 1991 under the Demonstration Projects for the Integration of Vocational and Academic Learning Program, authorized by section 420 of the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act), as added by Public Law 101-392, 104 Stat. 753 (1990). Under the proposed absolute priority, funds for the competition would be reserved absolutely for applications proposing to demonstrate model tech-prep education programs. The proposed projects would have to be based on successfully designed, established, and operating tech-prep education programs that integrate vocational and academic learning and that would serve as models for programs to be developed under the State-Administered Tech-Prep Education Program. The Secretary also proposes to prohibit the use of Federal funds received under this program for equipment. Lastly, the Secretary proposes other requirements and new selection criteria for evaluating applications submitted for this competition only.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Richard F. DiCola, U.S. Departmernt of Education, 400 Maryland Avenue, SW., room 4512-MES, Washington, DC 20202-7242.

FOR FURTHER INFORMATION CONTACT: Richard F. DiCola. Telephone: 202-732-2370. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time).

SUPPLEMENTARY INFORMATION: Section 420 of the Perkins Act provides for the development, implementation, and operation of programs using different models of curricula that integrate vocational and academic learning. One area in which the integration of vocational and academic learning is vital to the success of projects is tech-prep education. The Perkins Act requires projects funded under the State-Administered Tech-Prep Education Program (title III, part E of the Perkins Act) to provide technical preparation in a particular field and to "build student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study * * *." Moreover, the widespread interest in, and need for, integrating vocational and academic learning and in tech-prep education support establishing a priority for tech-prep education programs under the Demonstration Projects for the Integration of Vocational and Academic Learning Program in order to provide meaningful direction, resources, and expertise to others wanting to replicate these models.

The Secretary wishes to highlight for potential applicants that this priority would also help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. The integration of vocational and academic learning in tech-prep education projects will directly support National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The integration of vocational and academic learning also can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence.

Background on Tech-Prep Program

Under the State-Administered Tech-Prep Education Program authorized by title III, part E, of the Perkins Act, the States will award grants to consortia of local educational agencies and postsecondary educational institutions to develop and operate tech-prep education programs. Congress appropriated $63,434,000 for use in FY 1992 for this purpose.

Section 347(1) of the Perkins Act defines a "tech-prep education program," for purposes of the State-administered program, as a combined secondary and postsecondary program that—

(a) Leads to an associate degree or two-year certificate;

(b) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(c) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(d) Leads to placement in employment.

The local projects funded under the State-Administered Tech-Prep Education Program are intended to be developmental in nature, with each local project being authorized to acquire, as part of its planning activities, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

Projects Demonstrating the Integration of Vocational and Academic Learning in Tech-Prep

The purpose of this proposed priority notice, which would fund federally administered tech-prep demonstration projects, is to provide for evaluations of the funded projects, and for models and other forms of assistance for the local projects funded under the State-administered program as well as for other localities that may not receive these funds. Unlike State and locally funded projects, which will be primarily developmental in nature, the projects funded under this proposed priority would:

- Be based on existing programs that demonstrate success through evidence of student achievement, completion and placement rates;
- Conduct rigorous evaluation activities which may include refining existing data or collecting additional data to yield results that can be submitted to the Secretary for review by the Department's Program Effectiveness Panel;
- Demonstrate curricula and courses that integrate vocational and academic learning; and
- Provide resources, materials, technical assistance, inservice training, and other forms of professional development to help others replicate successful tech-prep education programs.

Pursuant to section 420 of the Perkins Act, the model tech-prep education projects that are funded under this competition must demonstrate programs using different models of curricula that

integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) established under section 1562 of the Elementary and Secondary Education Act of 1965, as amended.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, subject to meeting applicable rulemaking requirements, nor does it limit the Secretary to funding only this priority.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. In order to provide models for programs to be developed and funded under the State-Administered Tech-Prep Education Program (title III, part E of the Perkins Act), the Secretary proposes to fund under this competition only applications that demonstrate tech-prep education programs, as defined in section 347 of the Perkins Act, that—

(a) Are based on successfully designed, established, and operating tech-prep education programs; and

(b) Meet the requirements for funding under Title III–E of the Perkins Act.

In order to be funded under title III–E of the Perkins Act, a tech-prep program must—

(1) Be carried out under an articulation agreement between the secondary and postsecondary participants in the project. *Articulation agreement* means a commitment to a program designed to provide students with a nonduplicative sequence of progressive achievement leading to competencies in a tech-prep education program;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate arts degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the secondary and postsecondary participants;

(4) Include inservice training for teachers that—

(A) Is designed to train teachers to effectively implement tech-prep education curricula;

(B) Provides for joint training for teachers from all secondary and postsecondary participants; and

(C) May provide this training in weekend, evening, and summer sessions, institutes, or workshops;

(5) Include training programs for counselors designed to enable counselors to more effectively—

(A) Recruit students for tech-prep education programs;

(B) Ensure that these students successfully complete the programs; and

(C) Ensure that these students are placed in appropriate employment;

(6) Provide equal access to the full range of technical preparation programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of such individuals; and

(7) Provide for preparatory services which assist all participants in the programs.

Required Activities

The Secretary further proposes to require that any project funded under this competition must—

(a) Disseminate its results in a manner designed to provide information on integration of vocational and academic learning to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out tech-prep programs;

(b) Provide resources, materials, technical assistance, inservice training, and other forms of professional development to help others replicate successful tech-prep education programs;

(c) Provide, and budget for, an independent evaluation of grant activities. The evaluation must—

(1) Include activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(2) Be based on student achievement, completion, and placement rates, and the effectiveness of disseminating information and materials produced by the project to appropriate audiences; and

(3) Provide a summary of evaluation activities and results that the grantee shall submit to the Secretary for review by the Department's Program Effectiveness Panel; and

(e) Expend no Federal funds received under this program for equipment, as defined in 34 CFR 74.132 and 80.32.

Criteria for Evaluating Applications

For the FY 1992 grant competition under the Demonstration Projects for the Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects), the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project provides a model for programs to be funded under the State-Administered Tech-Prep Education Program;

(2) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning;

(3) The extent to which the project will serve—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at post secondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and currently operating model tech-prep education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Successful transfer of students to a variety of postsecondary education programs at the completion of the tech-prep education program; and

(iv) Placement of students in jobs, including military service, at the completion of the tech-prep education program;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements for an independent evaluation;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curriculum developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (15 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

Paperwork Reduction Act of 1980

This proposed priority contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priority to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

This proposed priority would affect the following types of entities eligible to apply for a grant under this program: Institutions of higher education, area vocational education schools, State boards of vocational education, public

or private nonprofit organizations, and any combination of these types of entities. The Secretary needs this information to determine whether proposed projects are likely to meet identified national needs. Annual public reporting burden for this collection of information is estimated to average 90 hours per response for one hundred fifty respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Atten'ion: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed absolute priority, (b) the proposed selection criteria, and the other requirements.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4512, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2420.

(Catalog of Federal Domestic Assistance Number 84.248 Demonstration Projects for the Integration of Vocational and Academic Learning Program)

Dated: September 19, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-31254 Filed 12-31-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
January 2, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Training and Technical Assistance Grant and Planning Grant Programs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Training and Technical Assistance Grant and Planning Grant Programs

December 26, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of discretionary grant funds for federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites applications from Indian tribes within the contiguous 48 United States and Alaska, for two (2) separate grant programs. The purposes of these grant programs are: (1) To allow tribes to address governmental and/or program operational problems through technical assistance grants; and, (2) to monitor, contract, plan, design or redesign programs serving the tribe under a planning grant. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth in this announcement. Such grants are authorized by section 103 of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended by Public Law 100-472, Public Law 101-301 and Public Law 101-644. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

DATES: The closing date for submission of applications under this announcement is March 3, 1992.

FOR FURTHER INFORMATION CONTACT: George Clark, (202) 208-1708 or Denise Homer, (202) 208-5727, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, room 4627, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Programs

The purpose of the grant programs under this announcement is twofold: (1) To allow tribes to address needs and/or problem areas associated with governmental affairs, program administration and operations, and/or service delivery; and, (2) to permit tribes to monitor, evaluate, plan and design or redesign the Federal programs serving them.

Each of these grant initiatives has its own criteria and guidelines which are designed to accomplish specific objectives for a targeted subgroup of tribes. For instance, the criteria for training and technical assistance grants requires that the tribal applicants document specific needs and/or problems and devise step-by-step strategies to satisfy the needs or resolve the problems which are impediments to their growth. Using the same principle, criteria for planning grants were formulated to specify that these grants would be awarded to the most capable tribes. These are tribes not normally in need of strategical technical assistance since they generally have clean audits, operate mature contracts and have the reputation of administering "good" programs and service delivery systems. Tribes most capable of planning and operating programs may receive planning grants for comprehensive program planning, program redesign, as well as planning for reservation resources development.

To accomplish these ends, the Bureau of Indian Affairs announces the availability of $1.75 Million for the two (2) grant programs.

B. Training and Technical Assistance Grant Program

(1) Purpose of the Grant Program

The purpose of this grant program is to allow tribes to address needs and/or problems associated with governmental affairs, program administration and operations, and/or service delivery. Such grants will enable tribes to resolve present and past problems thereby permitting grantee tribes to improve conditions, advance their movement toward self-sufficiency, and to exercise a greater degree of self-determination in the operation of programs designed to benefit their membership and/or other resident Indian peoples.

(2) Eligibility Criteria

To receive a training and technical assistance grant, a tribe, including an authorized tribal organization, must be able to document and/or demonstrate its needs utilizing five (5) or more of the following identifying conditions or criteria:

(a) The current organization-wide, single audit report findings contain significant and/or material audit exceptions;

(b) Correspondence or other documentation that the tribe is not presently capable of withstanding an organization-wide single audit. This means that:

(i) The tribe's books or records are missing, incomplete or are not in reviewable condition and/or in a condition to sustain a full audit;

(ii) The tribe has not met specific audit requirements for a Federal program it operates although the program is complete and an audit is due; and/or

(iii) The tribe has been notified it cannot receive an initial or continuation grant or contract from one (1) or more agencies due to outstanding audits and/or audit exceptions;

(c) The tribe has had debt collection notices and/or notification it cannot receive a grant or contract until an approved corrective action plan which has the potential to resolve current and/or past audit exceptions is formulated and is in place;

(d) The tribe is unable to accomplish current or past grant/contract objectives and/or is not capable of preparing successful grant/contract applications;

(e) The tribe is not able to operate properly under its management systems although the systems have been approved as satisfying regulatory requirements;

(f) The tribal government has little or no control over its various program operations, thus no control over service delivery, and cost overruns, etc.;

(g) The tribal government needs help but is in such a state it is unable to indicate the type or amount of assistance needed;

(h) The tribal government is experiencing serious internal strife and the tribe is paralyzed with political factionalism which results in the deterioration of its government as well as its program or service delivery systems.

(3) Continuation Grants

In cases where a continuous grant is requested, documentation of the prior years performance is an additional requirements. A continuation grant application must document that the applicant tribe has accomplished, or can demonstrate that it has made substantial progress toward accomplishing its prior year's grant objectives in order to receive a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant.

To document continuing needs or problems, the applicant may furnish new Office of Management and Budget (OMB) Circular A-128 organization-wide single audit reports, OMB Circular A-123 internal control reviews, Area and/or Agency Office monitoring reports reflecting the existence of problems or poor program performance, and/or Office of the Inspector General (OIG) or General Accounting Office (GAO) reports. Further, evidence that one (1) or more Federal agencies have

initiated debt collection action against the applicant tribe and will not renew or award any new grants or contracts to the applicant tribe until the debt is cleared.

(4) Content of Application

Applications for a training and technical assistance grant must:

(a) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a training and technical assistance grant.

(b) Contain a written commitment to use the training and technical assistance grant to address the needs and/or problems cited in the section B(2) of this announcement.

(c) Follow the application requirements set forth in Office of Management and Budget Circular A-102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), and as implemented within the Department of the Interior in 43 CFR part 12. Under part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(i) A statement of specific needs and/or problems to be addressed under the proposed grant along with the documentation used to support the needs or problems statement; e.g., OMB Circular A-128 audit reports;

(ii) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified;

(iii) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants;

(iv) A description of the personnel required, if any, to carry out grant activities and/or objectives; and provide position descriptions which include qualifications for education and experience;

(v) A line item budget, with narrative justification, to demonstrate how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant, and that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A-87, Cost Principles for State and Local Governments.

(d) The applicant must indicate how other available resources such as tribal income, other Bureau grants or capacity building grants from other agencies will be committed to complement or support this effort.

(e) The applicant must make a written commitment to maintain the positive results expected from the grant.

(f) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this announcement.

(g) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, part-time employee, etc.

(h) The grantee must agree in its application to submit quarterly financial status and progress reports.

(i) The applicant must complete a Certification Regarding Drug-Free Workplace Requirements.

(j) No indirect cost funds shall be provided for grants under this announcement.

(5) Other Conditions

(a) Contain the vitae or résumés of project staff and/or third party technical assistance providers or, if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the tribe's grant objectives;

(b) A tribe making application for the purchase of third party technical assistance must agree to develop a plan for delivery of technical assistance which contains a schedule of activities and clearly indicates the person(s) responsible for carrying out each of the grant activities;

(c) Deviation or non-adherence to the technical assistance plan by the technical assistance provider can result in nonpayment to the technical assistance provider.

(d) The funds awarded under this announcement may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, Rating and Approval of Applications for Training and Technical Assistance Grants

An original and two (2) copies of the training and technical assistance grant application are to be submitted to the local Agency Office. Applications submitted in response to this announcement will be received, reviewed, and rated as follows:

(a) *Application Review Process.*—(i) *Agency Office Responsibility:* Applications shall be submitted to the appropriate Agency Superintendent for review and comment. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and to insure that the application is consistent with the conditions set forth in sections B(1) through B(5) of this announcement. Within ten (10) calendar days of its arrival in the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) *Area Office Responsibility.* Upon receipt of the application the Area Director shall:

(A) Within fifteen (15) calendar days, conduct a review of each application for consistency with sections B(1) through B(5) of this announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(B) Exception in this application review process. An application for a technical assistance grant received from a tribe experiencing internal strife may be recommended for approval based on the Area Director's judgment that the applicant tribe is making a serious effort to resolve its internal problems. Further, it must be clearly documented in the application that the tribal factions will accept third party intervention in an attempt to resolve the problems causing the internal strife.

(b) *Application Rating Process.* (i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in section B(1) through B(5) of this announcement.

(ii) Applications shall be rated in accordance with the following guidelines:

Criteria	Points
(A) *Need/Problem:* The applicant can furnish documentation or demonstrate it has five (5) or more of the identifying conditions or criteria listed in section B(2) of the Training and Technical Assistance Grant program	(0–30)
(B) *Work Statement:* The application work plan describes in detail how it will meet the needs or overcome problems cited in criteria (A). The work plan also contains a schedule of activities, which if executed properly, will accomplish the goals and/or objectives of the grant	(0–30)
(C) *Applicant Capability:* The application contains the vitae or résumés of project staff and/or third party technical assistance providers or if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the grant objectives	(0–15)
(D) *Budget Justification:* The application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable	(0–10)
(E) *Management or Self-Monitoring System:* The application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary	(0–15)

(c) *Application Approval Process.* Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

(7) Schedule for the Receipt of Training/ Technical Assistance Grant Applications

Area Offices are to formally notify Agency Offices and tribes that this program exists in FY 1992, immediately upon the receipt of this announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of Applications for Training and Technical Assistance Grants

Applications submitted in response to this announcement must be:

(a) Postmarked no later than midnight March 3, 1992, if mailed;

(b) Received in the Agency office no later than the close of business March 3, 1992, if hand delivered.

(9) Appeals

Appeals of administrative actions by the Bureau of Indian Affairs on training/ technical grant applications are governed by part 2 of 25 CFR.

C. Planning Grant Program

(1) Purpose of the Grant Program

To allow tribes to assume more control over programs designed to serve tribal populations, generally diminishing Federal domination over programs serving Indians.

A planning grant may be used by a tribe to centralize or consolidate all of its administrative functions, to consolidate or integrate Federal programs serving the tribe, as well as formulate short and long-range plans for reservation resources development.

(2) Eligibility Criteria

Tribes receiving planning grants must not only be capable of developing plans, they must also be capable of successfully implementing the plans.

(a) To receive a planning grant a tribe must:

(i) Survey or inform its reservation or community population that the tribe wishes to plan, and carry out such plans as many be developed, to make significant changes in its programs and its service delivery to Indian beneficiaries;

(ii) Have no significant or material audit exceptions noted in any and all current cost audits and/or the current OMB Circular A–128 organization-wide single audit report;

(iii) Administer mostly "mature" contracts; i.e., those meeting the definition of "mature" as found in Public Law 93–638, as amended;

(iv) Have a history of operating or administering Federal programs and services in a sound manner;

(v) Have a stable tribal government as evidenced by a tribe's not having made radical, unplanned changes in program direction which have resulted in the diminishment of services to Indian beneficiaries and resulted in significant audit exceptions under criteria (ii), above;

(b) When a tribe is requesting a planning grant which encompasses activities identified as reservation resources development, the tribe must also satisfy one (1) or more of the following additional conditions;

(i) The tribe has successfully administered other developmental projects and has done so without governmental or political interference;

(ii) The tribe's plan reflects its willingness to accept guidance and assistance for the modification, if necessary, of its comprehensive development plan from subject matter experts; and/or

(iii) The tribe's plan reflects its willingness to accept monitoring and technical assistance as may be arranged by subject matter experts to ensure the best opportunity for success of the grant activity.

(3) Continuation Grants

In cases where a continuation grant is requested, documentation of the prior year's performance is an additional requirement. A continuation grant application must document that the applicant tribe has accomplished, or is able to demonstrate that it has made substantial progress toward accomplishing, its prior year's grant objectives in order to receive consideration for approval of a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant.

(4) Application Content

Applications for a planning grant must:

(a) Follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), as implemented within the Department of the Interior in 43 CFR part 12. Under part IV of Standard Form 424, Program Narrative Statement, the grant application must:

(i) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a planning grant;

(ii) Contain a clear statement of the goals and objectives to be achieved through the proposed grant along with the rationale to support the goals and objectives proposed;

(iii) Contain a program narrative which describes, step-by-step how and by whom the goals and objectives of the grant project will be satisfied;

(iv) Contain the vitae or résumés of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualification and experience necessary for project staff

and/or third party technical assistance providers to accomplish the grant objectives; and,

(v) A line item budget, with narrative justification, to demonstrate that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A-87, Cost Principles for State and Local Governments.

(b) Contain a schedule for the start and projected completion dates for actions or efforts to be taken to meet the goals and objectives identified under the proposed grant.

(c) A description of the personnel required, if any, to carry out grant activities and/or objectives and provide position descriptions which include qualifications for education and experience.

(d) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, other Bureau grants and/or contracts or other capacity building grants from other agencies.

(e) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this announcement.

(f) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, part-time employee, etc.

(g) The grantee must agree in its application to submit quarterly financial status and progress reports.

(h) Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant which will be used for rating of the continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

(i) The applicant must complete a Certification Regarding Drug-Free Workplace Requirements.

(j) No indirect cost funds shall be provided for grants under this announcement.

(5) Other Conditions

(a) A tribe's application for the purpose of planning must clearly outline a monitoring schedule for planning activities and clearly indicate the person(s) responsible for carrying out each of the grant activities;

(b) Deviation or non-adherence to the planning schedule by a technical assistance provider can result in nonpayment to the provider;

(c) The funds awarded under this announcement may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, Rating and Approval of Application for Planning Grants

An original and two (2) copies of the planning grant application are to be submitted to the local Agency Office. Applications submitted in response to this announcement will be received, reviewed, and rated as follows:

(a) *Application Review Process.*—(i) *Agency Office Responsibility:* Applications shall be submitted to the appropriate Agency Superintendent for review to determine if the application is consistent with the conditions set forth in sections C(1) through C(5) of this announcement. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and, within ten (10) calendar days of its arrival at the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) *Area Office Responsibility.* Upon receipt of the application the Area Director shall within fifteen (15) calendar days, conduct a review of each application for consistency with sections C(1) through C(5) of this announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(b) *Application Rating Process.* (i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in sections C(1) through C(5) of this announcement.

(ii) Applicants shall be rated in accordance with the following guidelines:

Criteria	Points
(A) *Eligibility:* The applicant can document or demonstrate it meets the eligibility criteria in section C.2(a) and, if the application encompasses activities identified as reservation resources development, at least one of the additional criteria in section C.2(b) of the Planning Grant program	(0-30)
(B) *Work Statement:* The application work plan describes in detail how it will achieve the goals and objectives specified in the proposed Planning Grant. The work plan also contains a schedule of activities, which if executed properly, will accomplish the objectives and/or goals of the proposed Planning Grant	(0-30)
(C) *Applicant Capability:* The application contains the vitae or résumés of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience of project staff and/or third party technical assistance providers necessary to accomplish the grant objectives	(0-15)
(D) *Budget Justification:* The application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable	(0-10)
(E) *Management or Self-Monitoring System:* The application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary	(0-15)

(c) *Application Approval Process.* Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

(7) Schedule for the Receipt of Planning Grant Applications.

Area Officers are to formally notify Agency Offices and tribes that this program exists in FY 1992, immediately upon the receipt of this announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of Allocations for Planning Grants

Applications submitted in response to this announcement must be:

(a) Postmarked no later than midnight March 3, 1992, if mailed;

(b) Received in the Agency office no later than the close of business March 3, 1992, if hand delivered.

(9) Appeals

Appeals of administrative actions by the Bureau of Indian Affairs on planning grant applicants are governed by part 2 of 25 CFR.

Ronal Eden,

Acting Assistant Secretary—Indian Affairs.

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Thursday
January 2, 1992

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Dallas-Fort Worth Terminal Control Area and Revocation of the Dallas Love Field Airport Airport Radar Service Area, TX; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-14]

Alteration of the Dallas-Fort Worth Terminal Control Area and Revocation of the Dallas Love Field Airport Airport Radar Service Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Dallas-Fort Worth, TX, Terminal Control Area (TCA) and revokes the Airport Radar Service Area (ARSA) at Dallas Love Field, TX. This amendment will raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this amendment will extend the lateral limits of the TCA from 20 to 30 nautical miles (NM) from the airport, to provide an area wherein ATC can provide TCA control services throughout critical maneuvering phases of flight operations in the terminal area. This action will expand the radius of the inner area to 10 miles and include an extension encompassing Dallas Love Field, enhance air traffic procedures, and simplify visual flight rules (VFR) transient operations outside TCA airspace.

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

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

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the types of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, a military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The modification to the TCA in this final rule are the product of discussions with a broad representation of the aviation community and substantial public participation. In conjunction with this action, the FAA will continue to cooperate with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

Initially, informal airspace meetings were held in the Dallas-Fort Worth area on August 4, 9, and 11, 1988, to permit local aviation interests and airspace users an opportunity to present input on the alteration of the Dallas-Fort Worth TCA. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 3, 1991 (56 FR 13712).

Discussion of Comments

The FAA received 55 comments in response to the NPRM. The FAA considered these comments as well as the comments received at the various meetings and has amended the final TCA design as contained in this rule. The final TCA design contained herein promotes the safe and efficient use of airspace while satisfying ATC and user requirements.

Ten comments addressed areas that were not relevant to this rulemaking action and, therefore, will not be discussed. Those areas included controller staffing, pilot education, waivers, and rule enforcement.

Thirteen commenters opposed establishing the ceiling of the TCA at 10,000 feet MSL and extending the radius of the lateral boundary from 20 to 30 miles from the DFW VORTAC. Conversely, the Air Transport Association suggested raising the ceiling to 12,500 feet MSL and extending the lateral boundaries to 30 miles in all areas of the proposed TCA.

In designing the Dallas-Fort Worth TCA alteration, the FAA determined the airspace needed to contain the traffic using updated procedures which will, in turn, enhance the flow of traffic in the terminal area. Also, the TCA alteration was designed to handle existing and projected increases in traffic and complexity in the Dallas-Fort Worth area. A ceiling of 10,000 feet MSL combined with the Mode C requirement of § 91.215 of the Federal Aviation Regulations (FAR) (14 CFR 91.215) will provide sufficient airspace to contain traffic operating into and departing the Dallas-Fort Worth area while providing an environment where nonparticipating overflights can operate congruently with a high degree of safety. The lateral boundaries of the TCA are established at 30 miles to allow sufficient airspace for all IFR operations requiring TCA protection while providing as much airspace as possible for VFR operation. The configuration of this area is designed to allow sufficient airspace for departure while allowing arriving aircraft to be vectored and sequenced to the final approach courses. Additionally, during the 1989 informal airspace meetings, users requested that the TCA include airspace to contain turboprop commuter operations. This airspace is designed to accommodate that request.

One commenter suggested that the floor of the TCA east of Dallas-Fort Worth between the 20- and 30-mile boundary (proposed Area K) be 5,000 feet MSL and that Area K be combined with Area L west of Dallas-Fort Worth.

The airspace configuration in the proposed Area K was designed to allow sufficient airspace for all IFR operations requiring TCA protection and to provide as much airspace as possible for VFR operations. This design allows sufficient airspace for departing aircraft while allowing arriving aircraft to be vectored and sequenced to the final approach courses. Additionally, this airspace will contain turbo prop commuter operations.

Eleven commenters recommended that the FAA raise the floor of Area B from 1,800 feet MSL as proposed to 2,000

feet MSL, combine Areas B and C, raise the floor of Areas F and J from 2,500 feet MSL as proposed to 3,000 feet MSL, and combine Areas F, J, and G. The FAA concurs with most of these recommendations and, in the final rule, has established the floor of Area B at 2,000 feet MSL and has combined Areas B and C; the final rule also establishes the floor of Area F at 3,000 feet MSL and combines Areas F and G. The floor of Area J remains 2,500 feet MSL. These actions were taken to allow adequate airspace for VFR operations conducted at uncontrolled airports south and southwest of Dallas-Fort Worth and to allow additional airspace for VFR practice operations at Redbird Airport.

The Air Line Pilots Association (ALPA) concurred with the proposed alteration to the TCA but recommended that the FAA lower the floor of Area L from 5,000 feet MSL to 4,500 feet MSL to establish a 500-foot buffer between the TCA and nonparticipating aircraft.

The TCA is designed to include only that airspace necessary to contain the operations of participating aircraft. While the idea of establishing buffers below the TCA appears advantageous, it would eliminate airspace necessary to allow nonparticipating VFR aircraft to circumnavigate the TCA at prescribed VFR altitudes. Therefore, ALPA's recommendation was not adopted.

The Dallas Department of Aviation was concerned that the extension of the TCA surface area to include Dallas Love Field would have an adverse impact on operations at a proposed heliport in the Dallas business district; the heliport is scheduled to be completed in January 1994. The Department of Aviation recommended that the 15-mile DME arc from the Dallas-Fort Worth 079° radial to the Dallas-Fort Worth 121° radial be reduced to a 12-mile DME arc. As an additional alternative, the agency recommended changing the southern boundary of Area A from the Dallas-Forth Worth 121° radial to the Dallas-Forth Worth 105° radial.

In considering the final design of the TCA, the FAA did not incorporate either suggestion because those changes may adversely affect the arrival/departure activities at Dallas Love Field. To help remedy the concerns of the Dallas Department of Aviation, the FAA will explore alternate procedures leading toward a mutual agreement by the completion date of the proposed heliport.

While most comments favored incorporating Dallas Love Field into the surface area of the TCA, six commenters and a helicopter pilot for the Dallas Police Department objected. These seven commenters expressed considerable concern about immediate access into the TCA by police helicopter, care flight helicopters, and aircraft transitioning in the vicinity of Dallas Love Field.

Currently, Dallas Love Field controllers provide airport radar service area (ARSA) service to the above-mentioned aircraft. This type of service will continue to be provided by Dallas Love Field Terminal Radar Approach Control, Tower Cab, obviating the problems these commenters envisioned as a result of incorporating Love Field in the TCA's surface area.

Nine commenters objected to lowering the TCA floor around Fort Worth Meacham (FTW) and Arlington (F54) Airports. These commenters stated that the lowered floors would leave insufficient airspace to conduct student pilot training in the vicinity of these airports and would eliminate airspace needed for VFR overflight.

The FAA agrees with these commenters and, in the airspace surrounding FTW, will raise the floor of the TCA from 3,500 feet MSL as proposed to 4,000 feet MSL; in the airspace surrounding F-54, the floor of the TCA will be raised from the proposed 2,500 feet MSL to 3,000 feet MSL. This change will allow more airspace for nonparticipating aircraft to operate in the vicinity of these airports without unduly restricting operations at Dallas-Fort Worth.

Three commenters suggested raising the floor of the TCA in the vicinity of Addison Airport (ADS) to accommodate inbound traffic especially when ADS is landing and departing aircraft on Runway 33. These commenters pointed out "an apparent lack of adequate maneuvering airspace" for the Runway 33 traffic pattern at ADS. The FAA did not raise the floor of the TCA in the vicinity of ADS because this airspace is necessary to contain inbound aircraft maneuvering to the Dallas Love Field and Dallas-Fort Worth Airports. Dallas-Fort Worth Terminal Radar Approach Control Facility (TRACON) recognizes the present dilemma which occurs during periods of busy traffic at ADS when a Runway 33 operation is in effect. Dallas-Fort Worth TRACON will, through appropriate coordination with ADS Tower, develop procedures to be incorporated in a subsequent letter of agreement to accommodate this operation when traffic deems it appropriate.

Several commenters, including the owner of the Northwest Regional Airport, stated that the proposed changes in Area D appeared to overlap that airport. They believe that, if promulgated as proposed, these changes could conflict with the airport traffic pattern and VFR overflights.

The actual western TCA boundary in the vicinity of Northwest Regional Airport, as described in the NPRM, is approximately 1 mile east of the airport and would not overlap it as depicted in the NPRM. However, the FAA will reduce the northern boundary of the proposed Area D from a 15-NM to a 13-NM radius of the Dallas-Forth Worth very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) to accommodate VFR activity in this area.

The Fort Worth Division of General Dynamics and Bell Helicopter Textron, Inc., objected to the proposed alteration because it would have an adverse effect on each organization's flight test operations. General Dynamics requested a cutout in the vicinity of Carswell Air Force Base to continue its current operation of conducting spiraling climbs to 15,000 feet MSL over the base. Bell Helicopter requested that it be allowed to maintain its current operation of rapid ascents and descents and other maneuvers requiring unrestricted use of the airspace. Both organizations were concerned about abnormalities and ensuing emergency procedures which might occur during testing.

General Dynamics' and Bell Helicopter's requests were not compatible with the present design and purpose of the TCA. The FAA will, however, work with each organization and attempt to develop procedures that will expedite directing these flights to a suitable area without derogation of safety or disruption to other users within the TCA.

Four commenters opposed the alteration to the TCA because it would adversely affect glider operations at Aero County Airport and its associated "aerobatics box." They suggested a cutout for Aero Country Airport with a floor of 6,000 feet MSL.

As previously stated, the airspace in this region of the TCA is necessary to segregate the various flows of turbojet arrivals and departures in the Dallas-Fort Worth area from conventional and turboprop aircraft which are generally kept at lower altitudes. Containing turboprop operations within the TCA was suggested during the informal airspace meetings; this suggestion has been incorporated into the final rule. The cutout for Aero Country Airport could not be accommodated in the final design of the TCA.

One commenter noted that gliders or those aircraft certified without an electrical system can operate within the

30-mile Mode C veil without Mode C avionics.

The FAA notes that pilots of these types of aircraft can fly beneath the TCA floor and thereby avoid the Mode C transponder requirement.

A considerable number of standardized form letters objected to the Mode C veil associated with the TCA. These letters suggested the creation of "effective hours restrictions" which, the commenters contended, would afford maximum protection to air carriers during peak periods, while still allowing GA aircraft low-altitude access to satellite facilities.

The FAA recognizes that the establishment of a TCA and the effect of the Mode C rule are related; however, the TCA design and the Mode C requirement are separate matters. The Mode C requirement extends to a radius of 30 miles from the TCA primary airport regardless of the design of TCA airspace.

The primary concern in any proposed TCA action is to provide the highest degree of safety while preserving the most efficient use of the available terminal airspace. The creation of "effective hours restrictions" would not satisfy this intent. This concept would not provide the safest environment for both IFR and VFR aircraft and could cause considerable confusion to nonparticipating aircraft.

The Rule

This amendment to part 71 of the FAR modifies the TCA at Dallas-Fort Worth International Airport, TX, and revokes the ARSA at Dallas Love Field Airport, TX. This amendment raises the upper limits of the TCA to 10,000 feet MSL to enable ATC to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this amendment will extend the lateral limits of the TCA from 20 to 30 nautical miles from the airport to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. The action will expand the radius of the inner area to 10 miles and include an extension encompassing Dallas Love Field, enhance air traffic procedures, and simplify VFR transient operations outside TCA airspace. The FAA has determined that modifying the TCA at Dallas-Fort Worth International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA. This summary and the full evaluation quantify estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to have an annual impact on the economy of $100 million or more, result in a major increase in consumer costs, have a significant adverse effect on competition, or be highly controversial.

The FAA has determined that this proposal is not major as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Costs

The Dallas-Fort Worth TCA changes will not require any additional personnel or equipment. Current staffing levels at the Dallas-Fort Worth TRACON will absorb any additional workload. Revised Dallas-Fort Worth sectional and terminal area charts will take effect simultaneously with the TCA revision. The Dallas-Fort Worth TCA change will not impose any additional cost burden on pilots. In the NPRM, the FAA estimated costs of $2,250 to conduct user briefings to explain proposed changes in the TCA. Since the publication of the NPRM, those briefings have been held. Because those costs have already been incurred, they are no longer relevant for consideration in the final rule.

Benefits

The primary objective of the rule is to enhance aviation safety in the congested airspace overlying the Dallas-Fort Worth metropolitan area. In addition, the rule will improve ATC service in the TCA. This rule also will facilitate the transition between the terminal and en route environments and aircraft separation.

The risk of a midair collision at Dallas-Fort Worth and Dallas Love Field will increase as traffic density there increases. However, stricter separation and control measures as applied within a TCA will reduce this risk. The FAA also expects that annexing the Dallas Love Field ARSA into the Dallas-Fort Worth TCA will further reduce the chance of a midair collision in the Dallas-Fort Worth airspace.

Preventing a possible midair collision between two aircraft in the next decade would generate benefits to the public. As a benchmark for comparing expected safety benefits of rulemaking, the FAA uses a value of $1,500,000 for each fatality and $640,000 for a serious accident. The average total loss of an aircraft equals $82,900 and the average cost to repair a severely damaged aircraft is estimated at $14,600. Most midair collisions occur between GA aircraft and average 25 fatalities and 2 serious injuries every 10 collisions. The benefit from the avoidance of one midair collision is estimated at $4 million.

Comparison

Changes mandated by this rule will impose only negligible, if any, costs on the public or the FAA. These negligible costs consist of additional fuel consumption by GA operations who choose to circumnavigate the expanded TCA. These negligible costs are greatly outweighed by the potential safety benefits of this rule that stem from the reduced risk of a midair collision in airspace annexed into the Dallas-Fort Worth TCA. However, the maximum benefits to be derived from this rule are dependent on the usage of Mode C transponder and TCAS by aircraft within the TCA.

Ordinarily, the benefit of a reduction in the risk of midair collisions from redesigning a TCA would be attributed entirely to the redesign. However, an indeterminate amount of the benefits has to be attributed to the interaction of the Dallas-Fort Worth TCA with the Mode C Rule, which, in turn, interacts with the TCAS Rule. The benefits of the redesigned TCA, as well as other designated airspace actions that require Mode C transponder, cannot be

separated from the benefits of the Mode C and TCAS Rules. The TCA program combined with the Mode C and TCAS Rules offers potential national benefits totaling $2.1 billion. Hence, the FAA considers this TCA modification to have benefits that exceed its cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entitles are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities that the rule might affect are unscheduled operators of aircraft for hire that own nine or fewer aircraft. These unscheduled air taxi operators would be affected only if they were not able to operate under IFR conditions. This analysis assumes that all unscheduled air taxi operators are already equipped to fly under IFR conditions. Since these operators fly regularly into airports with established radar approach control services, the FAA believes that all unscheduled air taxi operators are already equipped to fly under IFR conditions. Thus, this rule will not have a significant economic impact on any of them.

International Trade Impact Assesment

The rule will have no effect on the sale of foreign aviation products or services in the United States. Nor will the rule have an effect on the sale of U.S. products or services in foreign countries. This rule will not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

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

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation is not major under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact, either positive or negative, on a substantial number of small entities.

The FAA has determined that the users of the Dallas-Fort Forth International Airport, the Dallas Love Field Airport and the surrounding area will benefit from the implementation of the TCA. In order to maximize the benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is January 9, 1992, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in less than 30 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

The Amendment

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

PART 71-DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. Section 71.401(b) is amended by revising the Dallas-Fort Worth, TX, description to read as follows:

Dallas-Fort Worth, TX [Revised]
Primary Airport
Dallas-Fort Worth Airport (lat. 32°53'47"N., long. 97°02'28"W.).
Dallas-Fort Worth VORTAC (lat. 32°51'57"N., long. 97°01'40"W.).
Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the Dallas-Fort Worth VORTAC (DFW) 10-mile arc and the LBJ Freeway (Highway 635), thence eastbound on the LBJ Freeway until the DFW VORTAC 15-mile arc, extending clockwise on the DFW VORTAC 15-mile arc until the DFW 129° radial 15-mile DME fix, thence northwest on the DFW 129° radial until the DFW 129° radial 10-mile DME fix, extending clockwise on the DFW 10-mile arc until the DFW 169° radial 10-mile DME fix, thence north on the DFW 169° radial until the DFW 169° radial 7-mile DME fix, extending clockwise on the DFW 7-mile arc until the DFW 310° radial 7-mile DME fix, thence northwest on the DFW 310° radial until the DFW 310° radial 10-mile DME fix, and extending clockwise on the DFW 10-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 310° radial 10-mile DME fix, thence southeast on the DFW 310° radial until the DFW 310° radial 7-mile DME fix, extending counterclockwise on the DFW 7-mile arc until the DFW 169° radial 7-mile DME fix, thence southwest on the DFW 169° radial until the DFW 169° radial 10-mile DME fix, and extending clockwise on the 10-mile arc to the point of beginning.

Area C. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 13-mile DME fix, thence southeast on the DFW 300° radial until the DFW 300° radial 10-mile DME fix, extending clockwise on the 10-mile arc until the DFW 023° radial 10-mile DME fix, thence northeast on the DFW 023° radial until the DFW 023° radial 13-mile DME fix, and extending counterclockwise on the DFW 13-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 10-mile DME fix, extending counterclockwise on the DFW 10-mile arc to the DFW 169° radial 10-mile DME fix, thence southwest on the DFW 169° radial until Interstate Highway 20 (I–20), extending east along I–20 until the DFW 158° radial 13-mile DME fix, thence counterclockwise along the 13-mile arc until the DFW 129° radial, thence southeast along the DFW 129° radial until the 20-mile arc, extending clockwise on the DFW 20-mile arc until the DFW 217° radial, thence northeast on the DFW 217° radial until the DFW 217° radial 13-mile DME fix, extending clockwise along the 13-mile arc to the DFW 300° radial, and thence southeast on the DFW 300° radial to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at the DFW 169° radial 10-mile DME fix, extending southeast on the DFW 169° radial until I–20, thence east along I–20 until the DFW 158° radial 13-mile DME fix, extending counterclockwise on the DFW 13-mile arc until the DFW 129° radial 13-mile DME fix, thence northwest on the DFW 129° radial until

the DFW 129° radial 10-mile DME fix, and extending clockwise on the DFW 10-mile arc to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 217° radial 20-mile DME fix, extending clockwise on the DFW 20-mile arc until the DFW 300° radial, thence southeast on the DFW 300° radial until intercepting the DFW 13-mile arc, thence counterclockwise on the 13-mile arc to the DFW 217° radial, and extending southwest on the 217° radial to the point of beginning.

Area G. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 13-mile DME fix, thence northwest on the DFW 300° radial until the DFW 300° radial 20-mile DME fix, extending clockwise on the DFW 20-mile arc until the LBJ Freeway, extending northwest along the LBJ Freeway until intersecting the DFW 10-mile arc, extending counterclockwise on the DFW 10-mile arc until the DFW 023° radial 10-mile DME fix, thence north on the DFW 023° radial until the DFW 023° radial 13-mile DME fix, and extending counterclockwise on the DFW 13-mile arc to the point of beginning.

Area H. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 15-mile arc and the LBJ Freeway, extending clockwise on the DFW 15-mile arc until the DFW 129° radial 15-mile DME fix, thence southeast on the DFW 129° radial until the DFW 129° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the LBJ Freeway, and extending northwest along the LBJ Freeway to the point of beginning.

Area I. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 329° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 336° radial 30-mile DME fix, thence east to the DFW 020° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 162° radial 30-mile DME fix, thence west to the DFW 196° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 217° radial 30-mile DME fix, thence northeast on the DFW 217° radial until the DFW 217° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the DFW 329° radial 20-mile DME fix, and thence northwest on the DFW 329° radial to the point of beginning.

Area J That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 217° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 329° radial 30-mile DME fix, thence southeast to the DFW 329° radial until the DFW 329° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the DFW 217° radial 20-mile DME fix, and thence southwest on the DFW 217° radial to the point of beginning.

§ 71.501 [Amended]

3. Section 71 501 is amended by removing the Dallas Love Field, TX, description as follows:

Dallas Love Field, TX [Removed]

Issued in Washington, DC, on December 27 1991

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-31324 Filed 12-31-91, 8:45 am]

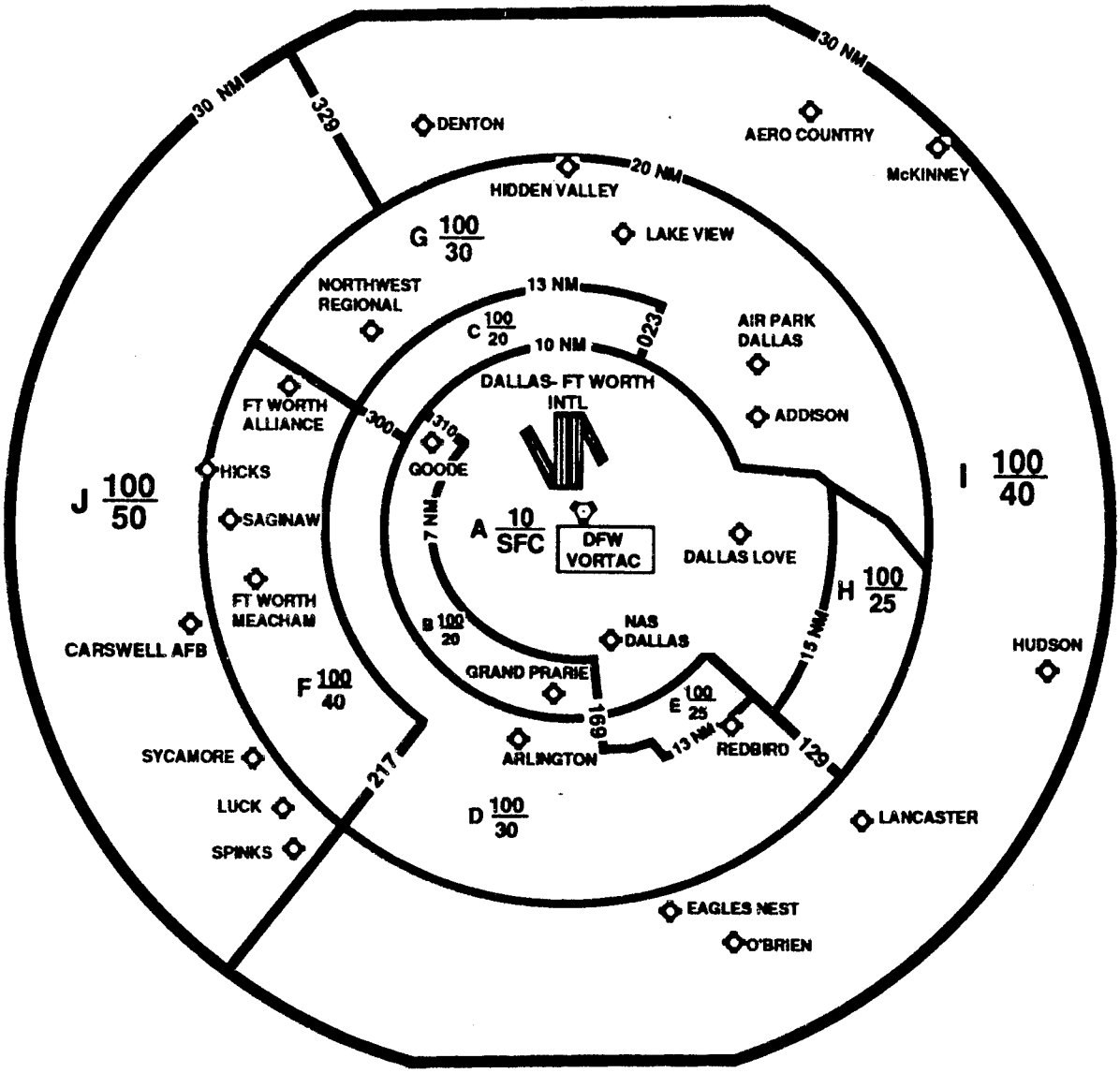
BILLING CODE 4910-13-M

DALLAS -FORT WORTH , TX

TERMINAL CONTROL AREA

FIELD ELEVATION - 603 FEET

(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

[FR Doc. 91-31324 Filed 12-31-91; 8:45 am]
BILLING CODE 4910-13-C

Reader Aids

Federal Register

Vol. 57, No. 1

Thursday, January 2, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-172.....2

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session will be published in Part II of the **Federal Register** on January 2, 1992.

The List of Public Laws may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws" from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

Last List December 26, 1991

CFR ISSUANCES 1992
Complete Listing of 1991 Editions and Projected January, 1992 Editions

This list sets out the CFR issuances for the 1991 editions and projects the publication plans for the **January, 1992** quarter. A projected schedule that will include the **April, 1992** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1991-1992 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1991:

Title

CFR Index

1-2

3 (Compilation)

4

5 Parts:
1-699
700-1199
1200-End

6 [Reserved]

7 Parts:
0-26
27-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1939
1940-1949
1950-1999
2000-End

8

9 Parts:
1-199
200-End

10 Parts:
0-50
51-199
200-399 (Cover only)
400-499
500-End

11

12 Parts:
1-199
200-219
220-299
300-499
500-599
600-End

13

14 Parts:
1-59
60-139
140-199
200-1199
1200-End

15 Parts:
0-299
300-799
800-End

16 Parts:
0-149
150-999
1000-End

Titles revised as of April 1, 1991:

Title

17 Parts:
1-199
200-239
240-End

18 Parts:
1-149
150-279
280-399
400-End

19 Parts:
1-199
200-End

20 Parts:
1-399
400-499
500-End

21 Parts:
1-99
100-169
170-199
200-299
300-499
500-599
600-799
800-1299
1300-End

22 Parts:
1-299
300-End

23

24 Parts:
0-199
200-499
500-699
700-1699
1700-End (Cover only)

25

26 Parts:
1 (§§ 1.0-1-1.60)
1 (§§ 1.61-1.169)
1 (§§ 1.170-1.300)
1 (§§ 1.301-1.400)
1 (§§ 1.401-1.500)
1 (§§ 1.501-1.640)
1 (§§ 1.641-1.850) (Cover only)
1 (§§ 1.851-1.907)
1 (§§ 1.908-1.1000)
1 (§§ 1.1001-1.1400) (Cover only)
1 (§ 1.1401-End)
2-29
30-39
40-49
50-299
300-499
500-599 (Cover only)
600-End

27 Parts:
1-199
200-End

Titles revised as of July 1, 1991:

Title

28

29 Parts:
0-99
100-499
500-899
900-1899
1900-1910 (§§ 1901.1-1910.999)
1910 (§§ 1910.1000-End)
1911-1925 (Cover only)
1926
1927-End

30 Parts:
1-199
200-699
700-End

31 Parts:
0-199
200-End

32 Parts:
1-189
190-399
400-629
630-699
700-799
800-End

33 Parts:
1-124
125-199
200-End

34 Parts:
1-299
300-399
400-End

35

36 Parts:
1-199
200-End

37

38 Parts:
0-17
18-End

39

40 Parts:
1-51
52
53-60
61-80
81-85
86-99
100-149
150-189
190-259
260-299
300-399
400-424
425-699 (Cover only)
700-789
790-End

41 Parts:
Chs. 1-100 (Cover only)
Ch. 101
Chs. 102-200
Ch. 201-End

Titles revised as of October 1, 1991:

Title

42 Parts:
1-60
61-399
400-429*
430-End

43 Parts:
1-999
1000-3999
4000-End

44*

45 Parts:
1-199
200-499
500-1199
1200-End

46 Parts:
1-40
41-69
70-89
90-139
140-155
156-165
166-199
200-499
500-End

47 Parts:
0-19
20-39
40-69
70-79*
80-End*

48 Parts:
Ch. 1 (1-51)
Ch. 1 (52-99)
Ch. 2 (201-251) (Revised as of Dec. 31, 1991)*
Ch. 2 (252-299) (Revised as of Dec. 31, 1991)*
Chs. 3-6*
Chs. 7-14
Ch. 15-End

49 Parts:
1-99
100-177 (Revised as of Dec. 31, 1991)*
178-199 (Revised as of Dec. 31, 1991)*
200-399
400-999
1000-1199
1200-End

50 Parts:
1-199
200-599*
600-End*

Projected January 1, 1992 editions:

Title

CFR Index

1-2

3 (Compilation)

4

5 Parts:
1-699
700-1199
1200-End

6 [Reserved]

7 Parts:
0-26
27-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1939
1940-1949
1950-1999
2000-End

8

9 Parts:
1-199
200-End

10 Parts:
0-50
51-199
200-399 (Cover only)
400-499
500-End

11

12 Parts:
1-199
200-219
220-299
300-499
500-599
600-End

13

14 Parts:
1-59
60-139
140-199
200-1199
1200-End

15 Parts:
0-299
300-799
800-End

16 Parts:
0-149
150-999
1000-End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 17	February 3	February 18	March 3	April 2
January 3	January 21	February 3	February 18	March 4	April 3
January 6	January 21	February 3	February 18	March 5	April 6
January 7	January 22	February 6	February 21	March 9	April 7
January 8	January 23	February 7	February 24	March 9	April 8
January 9	January 24	February 10	February 24	March 10	April 9
January 10	January 27	February 10	February 24	March 11	April 10
January 13	January 27	February 10	February 25	March 12	April 13
January 14	January 29	February 13	February 28	March 16	April 14
January 15	January 30	February 14	March 2	March 16	April 15
January 16	January 31	February 18	March 2	March 17	April 16
January 17	February 3	February 18	March 3	March 18	April 17
January 21	February 3	February 18	March 4	March 19	April 20
January 22	February 6	February 21	March 9	March 23	April 22
January 23	February 7	February 24	March 9	March 24	April 23
January 24	February 10	February 24	March 10	March 25	April 24
January 27	February 10	February 24	March 11	March 26	April 27
January 28	February 12	February 27	March 16	March 30	April 28
January 29	February 13	February 28	March 16	March 30	April 29
January 30	February 14	March 2	March 16	March 31	April 30
January 31	February 18	March 2	March 17	April 1	May 1