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Friday
October 15, 1993

Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Wheat, Barley, Rye, and Oat Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: Effective for the 1994 crop year only, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to extend the date for acceptance of applications for rye, wheat, barley, and oat crop insurance for all policies having a September 30 sales closing date.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Federal Crop Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the policy sale closing date. The Wheat Endorsement (§ 401.101), Barley Endorsement (§ 401.103), Rye Endorsement (§ 401.106), and Oat Endorsement (§ 401.105), have a sales closing date in some areas of September 30. To assist all persons needing to obtain multiple peril crop insurance coverage. The Manager of FCIC has determined that the sales closing date of September 30 for these crops may be extended to October 30 will not increase the risk to FCIC for the payment of loans, therefore, FCIC is extending the September 30 sales closing date for barley, wheat, rye, and oat crop insurance policies to October 30.

Under the provisions of the General Crop Insurance Regulations (§ 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. FCIC has determined that no adverse selection will result from this extension.

Notice

Accordingly, pursuant to the authority contained in (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that applications for rye, wheat, oat, and barely crop insurance will be accepted up to the close of business on October 30, 1993, effective for the 1994 crop year only, for producers needing multiple peril crop insurance coverage.

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

Done in Washington, DC on October 5, 1993.

Eugene Moos,

Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–25372 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–08–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0811]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule delegates to the General Counsel of the Board of Governors of the Federal Reserve System (Board) the authority to grant individual waivers under the federal conflicts of interest statute in cases in which the employee's financial interest is not so substantial as to be likely to affect the integrity of the employee's services to the Board. This delegation of authority will reduce the administrative burden of acting on such waiver requests.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cary K. Williams, Senior Attorney (202/452-3295), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal conflicts of interest statute, 18 U.S.C. 208, prohibits Board employees from participating in their official capacity in any particular matter in which, to their knowledge, they have a financial interest. Section 208(b)(1) of the statute provides a procedure for individual employees to obtain a waiver from this provision for interests that are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee. This waiver, a copy of which must be forwarded to the Office of Government Ethics (OGE), allows the employee to participate in the particular matter, notwithstanding the employee's financial interest.

The Board, as the "Government official responsible for [the employee's] appointment," is the only body presently authorized to grant individual waivers under section 208(b)(1) to Board employees. Pursuant to regulations promulgated by the OGE, however, this authority may be delegated (5 CFR 2635.402(d)). In order to minimize the need to have the Board consider each request for an individual waiver, the Board is delegating to the General Counsel, who also serves as the Board's Designated Agency Ethics Official, the authority to issue waivers for employees and officials other than Board members.

The provisions of the Administrative Procedures Act (APA)(5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The APA grants a specific exemption from its requirements relating to notice and public participation in this instance (12 U.S.C. 553(b)(3)(A)), and good cause exists to implement this delegation of authority immediately.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that this rule

will not have a significant economic impact on a substantial number of small entities. The amendment pertains to an internal delegation of authority, and would not have a substantial effect on particular small entities.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies).

For the reasons set forth in the preamble, the Board is amending 12 CFR part 265 as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

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

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.6 is amended by adding paragraph (g) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(g) *Conflicts of interest waivers.* To issue individual conflicts of interest waivers under 18 U.S.C. 208(b)(1) to employees and officials other than Board members.

By order of the Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25245 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ANM-6]

Revocation of Class E Airspace; Fort Morgan, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Fort Morgan Municipal Airport, Fort Morgan, Colorado. The Class E airspace was established originally to provide controlled airspace for an instrument approach procedure at Fort Morgan Municipal Airport. The approach procedure has since been cancelled and the controlled airspace is no longer required.

EFFECTIVE DATE: 0901 UTC January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 93-ANM-6, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

The Fort Morgan, Colorado, Class E airspace was designed for an instrument approach procedure at Fort Morgan Municipal Airport. The approach procedure has since been cancelled and the controlled airspace is no longer required. I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary because this is a minor technical amendment in which the public is not particularly interested. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations revokes the Class E airspace at Fort Morgan, Colorado.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 498 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Fort Morgan, CO [Removed]

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-25366 Filed 10-14-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-31]

Revocation of Class E Airspace; Bryce Canyon, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E Airspace at Bryce Canyon Airport, Bryce Canyon, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The airspace was previously utilized for an instrument approach procedure at Bryce Canyon Airport. The approach procedure has since been cancelled.

EFFECTIVE DATE: 0901 UTC January 6, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation Administration, Docket No. 93-ANM-31, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

The Bryce Canyon, Utah, Class E airspace was designed for an instrument approach procedure at Bryce Canyon Airport in controlled airspace extending from 700 feet or more above the surface of the earth. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term

"transition area," and airspace areas extending upward from 700 feet or more above the surface of the earth are now Class E airspace. The approach procedure has been cancelled and a designation of Class E airspace for an approach procedure is no longer necessary. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary because this is a minor technical amendment in which the public is not particularly interested. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations revokes the Bryce Canyon, Utah Class E airspace, which was designed to provide controlled airspace for an instrument approach procedure at Bryce Canyon Airport. The instrument approach procedure has been cancelled.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above surface of the earth.

* * * * *

ANM UT E5 Bryce Canyon, UT [Removed]

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25365 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–22]

Establishment of Class E Airspace; Deer Park, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Deer Park, Washington, Class E airspace. This action is necessary to provide additional controlled airspace for a new instrument approach procedure at the Deer Park Airport, Deer Park, Washington. The Class E airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–22, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Development of a new instrument approach procedure at the Deer Park Airport requires amendment of existing controlled airspace for the new procedure.

On February, 26, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Deer Park, Washington transition area. (58 FR 11553).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, effective as of September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal and in this final rule are in North American datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Deer Park, Washington, to provide additional controlled airspace for a new instrument approach procedure.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Deer Park, WA [New]

Deer Park Airport, WA
(lat. 47°58'07"N, long. 117°25'23"W)
Deer Park Nondirectional Radio Beacon, WA
(lat. 44°58'04"N, long. 117°25'49"W)

That airspace extending upward from 700 feet above the surface within a 4.0-mile radius of the Deer Park Airport and within 1.5 miles either side of the 339° bearing of the Deer Park Nondirectional Radio Beacon extending from the 4.0-mile radius to 6.5 miles northwest of the Deer Park Airport excluding the Spokane, Washington, Class E5 airspace.

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–25364 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 229

RIN 3220–AA60

Social Security Overall Minimum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby adds new regulations which explain under what circumstances an individual's annuity is increased so that it equals a minimum rate provided for in the Railroad Retirement Act. Although such a guarantee is provided for by statute, how and when it applies has never been explained by regulation.

EFFECTIVE DATE: October 15, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513; TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 3(f)(3) of the Railroad Retirement Act of 1974 guarantees that the total annuities payable to an employee and spouse, including the vested dual benefit, but not the supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. This guarantee is called the Social Security Overall Minimum Guarantee, or sometimes the Special Guarantee or Special Guarantee Rate, and is abbreviated for purposes of this part as O/M or, in the case of a disability overall minimum, DIB O/M. In this part the Board explains when an annuity can be increased under this guarantee and how the increased amount is determined.

Subpart A—General: Contains an Introduction (§ 229.1), Definitions applicable to this part (§ 229.2), explains part 229's relations to other parts of the Board's regulations (§ 229.3) and how to apply for the O/M (§ 229.4).

Subpart B—Social Security Overall Minimum Guarantee Defined: Defines in general terms what the O/M guarantee is (§ 229.10) and explains in general terms its computation (§ 229.11).

Subpart C—Eligibility For Increase Under the Overall Minimum: Section 229.20 describes when the employee-annuitant is eligible for an increase in his or her annuity under the O/M. Section 229.21 describes when a spouse annuity may be increased under the O/M. Section 220.22 indicates the earliest date on which the O/M may be paid.

Subpart D—Family Members Included in Overall Minimum Computation: In computing the O/M for and employee-annuitant, the formula may include the benefits that would be payable to his or her spouse, divorced spouse, or child had he or she been covered under the Social Security Act. Sections 229.30–229.33 describe when a spouse, divorced spouse, or child may be included in the O/M computation.

Subpart E—When Entitlement Under the Overall Minimum Ends: Section 229.40 describes when an increase in the employee or spouse annuity under the O/M must terminate. Section 229.41 describes when a spouse can no longer be included in the employee's O/M computation. Section 229.42 and § 229.43 provide when a child and when a divorced spouse may no longer be included in this computation.

Subpart F—Computation of the Overall Minimum Rate: Sections 229.45–229.47 describe the actual computation of the O/M. Section 229.48 describes the family maximum, which is a provision in the Social Security Act which puts a ceiling on the amount of benefits which may be paid on an individual's wage record. Section 229.49 shows how the O/M may be adjusted for the family maximum as the result of changes in the composition of the family group which is used in the computation of the O/M. Section 229.50 explains when the O/M is reduced for age if it becomes payable before the employee or spouse attain retirement age. The age reduction factor provided for in § 229.50 may itself be adjusted if the O/M is not paid for certain months prior to the employee's attaining retirement age, or if the employee becomes eligible for a DIB O/M before retirement age. Section 229.51 explains this adjustment. Section 229.52 explains that if an employee was receiving a reduced age O/M prior to becoming eligible for a DIB O/M, the age reduction is recomputed as if the employee were retirement age on the effective date of the DIB O/M. Sections 229.53–229.56 explain how receipt of a social security benefit will reduce any O/M payable. Section 229.57 explains how an O/M is computed if a spouse is eligible for both a spouse annuity and an employee annuity. Section 229.58 explains various rounding rules used in computing the O/M.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan: Section 229.65 explains how the DIB O/M is reduced for receipt of a worker's compensation benefit or public disability benefit. Section 229.66 describes how this reduction amount changes as a result of a change in a family group included in the computation of the DIB O/M or as the result of a change in the amount of worker's compensation or public disability benefit. Section 229.67 provides that all benefits reduced for such worker's compensation or public disability benefit must be periodically recomputed. However, the redetermined rate is used only if it is higher than the previous rate. Section 229.68 provides that the reduction for worker's compensation or public disability benefit is applied after any age reduction and reduction for the family maximum.

Subpart H—Miscellaneous Deductions and Reductions: Sections 229.80–229.85 describe various events which may also cause a reduction in the O/M rate.

Subpart I—Payment of the Overall Minimum Rate: Section 229.90 provides that where both the employee and spouse are entitled to annuities and the O/M rate is higher than the combined annuity rates (a rare instance), the

employee receives two-thirds of the O/M rate and the spouse the remaining one-third. Section 229.91 describes how the O/M rate is paid when it is only payable for part of the month.

On March 23, 1993, the Board published this regulation as a proposed rule inviting comments by April 26 1993 (58 FR 16155). No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections imposed by this part have been approved by the Office of Management and Budget under control number 3220–0083.

List of Subjects in 20 CFR Part 229

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, title 20, chapter II of the Code of Federal Regulations is amended by adding part 229 to read as follows:

PART 229—SOCIAL SECURITY OVERALL MINIMUM GUARANTEE

Subpart A—General

Sec.
229.1 Introduction.
229.2 Definitions.
229.3 Other regulations related to this part.
229.4 Applying for the overall minimum.

Subpart B—Social Security Overall Minimum Guarantee Defined

229.10 What the social security overall minimum guarantee is.
229.11 100 percent overall minimum.

Subpart C—Eligibility for Increase Under the Overall Minimum

229.20 When an employee is eligible for an increase under the overall minimum.
229.21 When a spouse is eligible for an increase under the overall minimum.
229.22 Beginning date of increase under overall minimum.

Subpart D—Family Members Included in Overall Minimum Computation

229.30 Who can be included in the computation of an annuity under the overall minimum.
229.31 When a spouse can be included in the computation of the overall minimum rate.
229.32 When a child can be included in the computation of the overall minimum rate.
229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

Subpart E—When Entitlement Under the Overall Minimum Ends

229.40 When an annuity increase under the overall minimum ends.
229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.
229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.
229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

Subpart F—Computation of the Overall Minimum Rate

229.45 Employee benefit.
229.46 Spouse or divorced spouse benefit.
229.47 Child's benefit.
229.48 Family maximum.
229.49 Adjustment of benefits under family maximum for change in family group.
229.50 Age reduction in employee or spouse benefit.
229.51 Adjustment of age reduction.
229.52 Age reduction when a reduced age O/M is effective before DIB O/M.
229.53 Reduction for social security benefits on employee's wage record.
229.54 Reduction for social security benefit paid to employee on another person's earnings record.
229.55 Reduction for spouse social security benefit.
229.56 Reduction for child's social security benefit.
229.57 Reduction in spouse overall minimum benefit for employee annuity.
229.58 Rounding of overall minimum amounts.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

229.65 Initial reduction.
229.66 Changes in reduction amount.
229.67 Redetermination of reduction.
229.68 Reduction of DIB O/M.

Subpart H—Miscellaneous Deductions and Reductions

229.80 Earnings restrictions.
229.81 Refusual to accept vocational rehabilitation.
229.82 Failure to have child in care.
229.83 Deportation.
229.84 Conviction of subversive activities.
229.85 Substantial gainful activity by blind employee or child.

Subpart I—Payment of Overall Minimum Rate

229.90 Proportionate shares of overall minimum.
229.91 Payment of the overall minimum for part of a month.

Authority: 45 U.S.C. 231(f)(b)(5).

Subpart A—General

§ 229.1 Introduction.

This part explains when an annuity can be increased under the social security overall minimum guarantee, also sometimes referred to as the "special guaranty", and how the increased amount is determined. Deductions and reductions in the overall minimum rate are explained.

§ 229.2 Definitions.

The following definitions are used in this part:

Annuity means a payment under the Railroad Retirement Act due and payable to an entitled claimant for a calendar month and made to him or her on the first day of the following month. The recipient of an annuity is called an annuitant.

Average Indexed Monthly Earnings or AIME means the average of the employee's monthly creditable earnings in both railroad and social security covered employment in the years used in computing the Primary Insurance Amount, after the earnings are adjusted or "indexed". The indexing is a means of expressing prior years earnings in terms of their current dollar value. It is based on increases in the average wages of all wage earners from 1951 although the second year before the year the worker dies or becomes eligible for benefits.

Contribution and benefit base means the maximum earnings used in computing a social security benefit under section 230 of the Social Security Act.

1974 Act means the Railroad Retirement Act approved October 16, 1974, including all amendments.

Railroad formula rate means the amount computed in accord with the regular railroad computations (sections 3(a), 3(b) and 3(h) of the Railroad Retirement Act).

Retirement age means age 65, with respect to an employee or spouse who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse). For an employee or spouse who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

§ 229.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter (listed numerically):

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 222 describes the family relationships which may cause an annuity to be increased under this part.

Part 225 explains how Primary Insurance Amounts (PIA's) are computed.

§ 229.4 Applying for the overall minimum.

The Board may require an annuitant to provide information regarding his or her family and regarding his or her earnings from employment and self-employment in order to determine whether the claimant or annuitant qualifies for the overall minimum.

(Approved by the Office of Management and Budget under control number 3220–0083)

Subpart B—Social Security Overall Minimum Guarantee Defined

§ 229.10 What the social security overall minimum guarantee is.

The social security overall minimum guarantee is the amount of total family benefits which would be paid under the Social Security Act if the employee's railroad service had been covered by that Act. A 100 percent overall minimum benefit may be paid, as described in § 229.11. A 100 percent overall minimum based on age (age O/M) may be payable when the employee is 62 years old. The age O/M is reduced for age for months in which the O/M is payable before the employee attains retirement age. An overall minimum may also be payable before age 62 based on an employee's disability (DIB O/M). The DIB O/M is not reduced for age.

§ 229.11 100 percent overall minimum.

Section 3(f)(3) of the 1974 Act guarantees that the total annuities payable to the employee and spouse, including the vested dual benefits but not including a supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. Subpart F describes how the 100 percent overall minimum rate is computed.

Subpart C—Eligibility for Increase Under the Overall Minimum

§ 229.20 When an employee is eligible for an increase under the overall minimum.

(a) *Overall minimum based on age.* An employee annuity can be increased under the age O/M if all the following conditions are met:

(1) The employee is entitled to an age or disability annuity as shown in part 216 of this chapter.

(2) The employee is at least 62 years old throughout the whole month. The O/M is reduced for each month it is payable before the month the employee attains retirement age.

(3) The employee is fully insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings.

(b) *Overall minimum based on disability.* An employee annuity can be increased under the DIB O/M if the employee is under retirement age, and

(1) Is entitled to an age or disability annuity; and

(2) Is disabled under § 404.1505 of this title; and

(3) Is insured for a disability benefit under § 404.130 of this title based upon combined railroad and social security earnings.

(c) *Spouse with child in care or spouse retirement age or older.* If the employee has not attained the age required to qualify the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) The employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse has an eligible child in care, or the spouse is retirement age or older.

(d) *Spouse election.* If the employee has not attained the age required to quality the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) the employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse is between age 62 and retirement age and does not have a child in care; and

(4) The spouse files an election to be included.

§ 229.21 When a spouse is eligible for an increase under the overall minimum.

Normally, only the employee annuity receives the amount of the overall minimum increase. However, a spouse annuity may be increased under the O/M in cases in which the O/M benefit amount exceeds the total amount of the employee and spouse annuity.

§ 229.22 Beginning date of increase under overall minimum.

(a) *Employee age O/M.* An increase under the overall minimum in an employee annuity based on age can be paid beginning with the later of:

(1) The first day of the first full month throughout which the employee is age 62; or

(2) The beginning date of the employee's age or disability annuity; or

(3) The first month of the quarter in which the employee becomes insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings; or

(4) The month the employee attains retirement age, if a DIB O/M was paid in the previous month. A DIB O/M is changed to an age O/M in the month the employee attains retirement age.

(b) *Employee DIB O/M.* An increase under the overall minimum in an employee annuity based on disability can be paid beginning with the later of—

(1) The beginning date of the employee's disability annuity; or

(2) The month after the month in which the disability waiting period described in § 404.315(d) of this title ends; or

(3) If no disability waiting period is required, the first month in which the employee is disabled and is insured for a disability benefit under § 404.130 of this title.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum can be paid on the later of:

(1) The date the increase in the employee's annuity is paid; or

(2) The date the spouse is both eligible under the O/M and entitled to a spouse annuity.

Subpart D—Family Members Included in Overall Minimum Computation

§ 229.30 Who can be included in the computation of an annuity under the overall minimum.

(a) *Spouse.* In order to be included as a spouse in the computation of the overall minimum rate, a person must be the employee's wife or husband, as defined in part 222 of this chapter, as of the date described in § 229.31 of this part. The spouse must also be 62 years or older throughout the whole month in which he or she is first included or have the employee's child who is under 16 years old or disabled (before attaining age 22) in his or her care. If a spouse is

62 years old or older and under retirement age, and does not have an eligible child in his or her care, the spouse will be included only if he or she requests the payment of a reduced spouse annuity.

(b) *Child.* In order to be included as a child in the computation of the overall minimum, a person must meet the following requirements as of the date described in § 229.32 of this part. The person must be:

(1) The employee's child as defined in part 222 of this chapter; and

(2) Dependent on the employee, as shown in part 222 of this chapter; and

(3) Not married; and either

(4) Under 18 years old, or 18 years old to 19 years old and a full-time student, as defined in part 216 of this chapter, or 18 years old or older and disabled for any regular employment (see part 220 of this chapter) before attaining age 22.

(c) *Divorced spouse.* In order to be included as a divorced spouse in the computation of the overall minimum, a person must be eligible for a benefit as a divorced spouse under the Railroad Retirement Act as of the date described in § 229.33 of this part.

§ 229.31 When a spouse can be included in the computation of the overall minimum rate.

(a) A spouse who is married to the employee when the employee's application is filed can be included in the computation of the overall minimum rate beginning in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity under the overall minimum, as shown in § 229.22 of this part; or

(2) The spouse first becomes eligible to be included under the overall minimum, as shown in § 229.30 of this part.

(b) A spouse who marries the employee after the employee application is filed can be included in the overall minimum computation in the month in which he or she becomes eligible, as shown in § 229.30 of this part, if the overall minimum rate is already payable in the previous month. If the railroad formula rate is payable in the month before the spouse becomes eligible, the spouse can be included in the overall minimum computation in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The spouse annuity begins.

§ 229.32 When a child can be included in the computation of the overall minimum rate.

A child who meets the requirements of § 229.30(b) of this part can be included in the computation of the overall minimum rate in the month in which:

(a) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22 of this part; or

(b) In the case of a child born or adopted by the employee after the employee's annuity beginning date, such child can be included only when the overall minimum rate is already payable in the month before the month in which the child is born, or adopted except where:

(1) The child is born or adopted prior to the employee's attaining age 62 or becoming eligible for a period of disability (see § 220.36 of this chapter); or

(2) The child who is adopted after the employee's annuity beginning date meets the dependency requirements set forth in § 222.53 of this chapter.

(c) In the case of a child who has attained age 18 and has become re-entitled as a full-time student or disabled child, as described in § 229.30 of this part, such child can only be included when the overall minimum rate is already payable in the month before the month the child becomes re-entitled.

§ 229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

A divorced spouse annuitant can be included in the computation of the overall minimum rate in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The divorced spouse annuity begins.

Subpart E—When Entitlement Under the Overall Minimum Ends

§ 229.40 When an annuity increase under the overall minimum ends.

(a) *Employee Age O/M.* An increase in an employee's annuity under the overall minimum based on age ends with the month before the month in which the employee dies. If a disability annuity is increased under the overall minimum based on age rather than disability, and the employee is under retirement age, the increase ends with the second month after the month the disability ends as shown in part 220 of this chapter.

(b) *Employee DIB O/M.* An increase in an employee's annuity under the overall minimum based on disability ends with the earlier of:

(1) The month before the month in which the employee dies; or

(2) The month before the month the employee attains retirement age (the DIB O/M is changed to an age O/M); or

(3) The second month after the month the disability ends, as explained in part 220 of this chapter.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum ends when the increase in the employee annuity ends, as shown in paragraphs (a) and (b) of this section, when the spouse can no longer be included in computing the annuity rate under the overall minimum as shown in § 229.41 of this part, or when the spouse annuity ends as shown in part 218 of this chapter.

§ 229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.

A spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the spouse dies; or

(b) The month before the month in which the spouse's marriage to the employee legally terminates; or

(c) If the spouse has an eligible child in care, the earlier of the month before the month in which the child leaves the spouse's care, attains age 16 and is not disabled, or, if disabled, recovers from being disabled; or

(d) The month before the month the employee dies.

§ 229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.

A child's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the child dies; or

(b) The month before the month in which the child marries; or

(c) The month before the month the child becomes 18 years old, unless the child is disabled or a full-time student, as shown in part 216 of this chapter; or

(d) The second month after the month the child's disability ends, if the child is 18 years old or older, and not a full-time student; or

(e) The month in which a student child's annuity would end, as shown in part 218 of this chapter, if the child is 18 years old or older, a full-time student in an elementary or secondary school, and not disabled; or

(f) The month before the month the child becomes entitled to an overall

minimum benefit or child's annuity on another earning record, if including the child on the other earnings record would result in higher monthly benefits.

§ 229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

A divorced spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the divorced spouse dies; or

(b) The month before the month the employee dies; or

(c) The month before the month in which the divorced spouse remarries; or

(d) The month before the month in which the divorced spouse becomes entitled to a retirement or disability benefit under the Social Security Act based upon a primary insurance amount which is equal to or exceeds the divorced spouse annuity before reduction for age.

Subpart F—Computation of the Overall Minimum Rate

§ 229.45 Employee benefit.

The original employee 100 percent overall minimum amount, before adjustment for age, other family members, or other benefits, is the Overall Minimum PIA, as described in part 225 of this chapter. This is the PIA which would be used under the Social Security Act if the employee's railroad service had been covered under that Act instead of the Railroad Retirement Act. The Overall Minimum PIA may be recomputed for additional earnings and adjusted for cost-of-living increases. Delayed retirement credits are added to the Overall Minimum PIA as shown in part 225, subpart D of this chapter.

§ 229.46 Spouse or divorced spouse benefit.

If a spouse or divorced spouse is included in the computation of the overall minimum, a benefit of 50 percent times the Overall Minimum PIA is computed. In the case of a spouse, the benefit may be adjusted for the family maximum, age, or other benefits. In the case of a divorced spouse, the benefit may be adjusted only for age or other benefits.

§ 229.47 Child's benefit.

If a child is included in the computation of the overall minimum, a child's benefit of 50 percent times the Overall Minimum PIA is computed. This amount may be adjusted for the family maximum or other benefits.

§ 229.48 Family maximum.

(a) *Family maximum defined.* Under the Social Security Act, the amount of monthly benefits that can be paid for any month on one person's earnings record is limited. This limited amount is called the family maximum. The family maximum used to adjust the social security overall minimum rate is based on the employee's Overall Minimum PIA. The divorced spouse overall minimum is never reduced because of the family maximum.

(b) *Computation of the family maximum.*—(1) *The employee attains retirement age prior to 1979.* The maximum is the amount appearing in column V of the applicable table published each year by the Secretary of Health and Human Services on the line on which appears in column IV the primary insurance amount of the insured individual whose compensation is the basis for the benefits payable. Where the maximum is exceeded, the total tier 1 benefits for each month after 1964 are reduced to the amount appearing in column V. However, when any of the persons entitled to benefits on the insured individual's compensation would, except for the limitation described in § 404.353(b) of title 20 (dealing with the entitlement to more than one child's benefit), be entitled to a child's annuity on the basis of the compensation of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of:

(i) The sum of the maximum amounts of benefits payable on the basis of the compensation of all such insured individuals, or

(ii) The last figure in column V of the applicable table published each year by the Secretary of Health and Human Services. The "applicable" table refers to the table which is effective for the month the benefit is payable.

(2) *The employee attains retirement age in 1979.* (i) The maximum is computed as follows:

(A) 150 percent of the first $230 of the individual's primary insurance amount, plus

(B) 272 percent of the primary insurance amount over $230 but not over $332, plus

(C) 134 percent of the primary insurance amount over $332 but not over $433, plus

(D) 175 percent of the primary insurance amount over $433.

(ii) If the total of this computation is not a multiple of $0.10, it will be rounded to the next lower multiple of $0.10.

(3) *The employee attains retirement age after 1979.* The maximum is computed as in paragraph (b)(2) of this section. However, the dollar amount shown there will be updated each year as average earnings rise. This updating is done by first dividing the average of the total wages (see 20 CFR 404.203(m)) for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (b)(2) of this section. Each updated dollar amount will be rounded to the nearer dollar, if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1. Before November 2 of each calendar year after 1978, the Secretary of Health and Human Services will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(c) *Disability family maximum.* If an employee's first month of entitlement to the DIB O/M is July 1980 or later, the family maximum is 85 percent of the employee's Average Indexed Monthly Earnings but not less than the employee's Overall Minimum PIA, and no more than 150 percent of the employee's Overall Minimum PIA.

(d) *Reduction for family maximum.* The spouse's and child(ren)'s share of the Overall Minimum PIA are reduced if the total benefits are higher than the family maximum amount. These auxiliary shares are adjusted so that they each receive a proportionate share of the family maximum amount over and above the employee benefit. This adjustment is before adjustment for age or other benefits. The spouse and child(ren)'s benefits are computed as follows:

(1) The Overall Minimum PIA is subtracted from the family maximum amount.

(2) The result from paragraph (d)(1) of this section is divided by the total number of auxiliary beneficiaries (spouse and children).

(3) If the amount of each benefit from paragraph (d)(2) of this section is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(e) *Combined family maximum.* If a child is eligible to be included in the computation of the overall minimum on more than one railroad retirement annuity, a combined family maximum may apply, if it results in higher annuity rates. The combined family maximum is the smaller of:

(1) The sum of the individual family maximums on each earnings record; or

(2) 1.75 times the highest primary insurance amount possible in a year using average indexed monthly earnings equal to one-twelfth of the contribution and benefit base for that year. Average indexed monthly earnings and contribution and benefit base are explained in § 229.2 of this part.

(f) This section may be illustrated by the following examples:

(1) An employee, age 62, applies for an age and service annuity under the Railroad Retirement Act (RRA). His annuity rate is $700. The employee has a son who was disabled for all regular employment prior to his attaining age 18. The RRA does not provide an annuity for a disabled child of a living employee. If the employee had been covered under the Social Security Act he would have received a benefit of $500 (the Overall Minimum PIA) and his child would have received a benefit of $250 (50 percent of $500), which produces a total family benefit of $750. The family maximum is $804.90. Under the O/M guarantee, the employee would receive $750 since it is higher than his annuity rate of $700. Since $750 is less than the family maximum computed for this employee, there is no reduction for the family maximum.

(2) It is determined that a disabled employee is entitled to a DIB O/M computed as follows:

Overall Minimum PIA	$ 600.00
Spouse (50% × 600)	300.00
Child (50% × 600)	300.00
	1200.00

However, the employee's family maximum is $900 (150 percent of $600). Consequently, the DIB O/M will be paid as follows:

Employee	$ 600.00
Spouse	150.00
Child	150.00
	900.00

§ 229.49 Adjustment of benefits under family maximum for change in family group.

(a) *Increase in family group.* If an overall minimum rate is adjusted for the family maximum and an additional family member can be included, the benefits payable to previous auxiliary beneficiaries (spouse and children) are reduced to provide a share for the new family member. The difference between the Overall Minimum PIA (see § 225.15 of this part) and the family maximum amount is divided by the increased number of auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining a beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(b) *Decrease in family group.* If an overall minimum rate is adjusted for the family maximum and there is a decrease in the number of eligible family members, the benefits for the remaining auxiliary beneficiaries (spouse and children) are increased. If the family maximum still applies, the difference between the Overall Minimum PIA and the family maximum amount is divided by the number of remaining auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(c) *Effective date of rate change.* The overall minimum rate changes described in paragraphs (a) and (b) of this section are effective the month in which the number of auxiliary beneficiaries changes.

§ 229.50 Age reduction in employee or spouse benefit.

(a) *When age reduction applies.* The employee overall minimum benefit is reduced for each month the employee is under retirement age on the date the employee becomes eligible for an increase under the overall minimum, as shown in § 229.22 of this part, unless the employee has a period of disability and § 229.52 of this part does not apply, in which case no age reduction is applied. The spouse overall minimum benefit is reduced for each month a spouse, who is not a spouse with the employee's child under 16 years old or disabled before attaining age 22 in his or her care, is under retirement age on the date the spouse is eligible for an increase under the overall minimum (see § 229.21 of this part). If a spouse's overall minimum benefit is reduced for age and he or she later begins caring for an eligible child, no age reduction will apply for the months the child is in his or her care.

(b) *Employee age reduction.* The Overall Minimum PIA plus any delayed retirement credits is reduced by $\frac{1}{180}$ for each month the employee is under retirement age on the date the employee becomes eligible for the overall minimum. When the PIA amount is increased, the amount of the increase is reduced by $\frac{1}{180}$ for the same number of months used to determine the initial age reduction.

(c) *Spouse age reduction.* The amount of the spouse overall minimum benefit, after any adjustment for the family maximum, is reduced by $\frac{1}{144}$ for each month the spouse is under retirement age on the date when he or she becomes eligible under the overall minimum. When the spouse benefit increases, the amount of the increase is reduced by $\frac{1}{144}$ for the same number of months used to compute the initial age reduction.

(d) *Age reduction after 1999.* Beginning in the year 2000 the amount of age reduction shall be as specified in paragraphs (b) and (c) of this section for the first 36 months of the reduction period, as defined in paragraph (e) of this section, and $\frac{1}{240}$ for any additional months included in such period.

(e) *Reduction period defined.* The reduction period is the number of months beginning with the first month for which the O/M is payable and ending with the month before the month the beneficiary attains retirement age.

§ 229.51 Adjustment of age reduction.

(a) *General.* If an age reduced employee or spouse overall minimum benefit is not paid for certain months before the employee or spouse attains retirement age, or the employee becomes entitled to a DIB O/M, the age reduction may be adjusted to drop the months for which no payment was made or the overall minimum rate was not reduced for age.

(b) *Employee adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the Overall Minimum PIA amount, effective the month in which the employee attains retirement age or becomes entitled to a DIB O/M:

(1) Months in which the increase under the overall minimum is completely or partially deducted because of the employee's excess earnings; and

(2) Months in which the employee is entitled to a DIB O/M as well as a reduced O/M.

(c) *Spouse adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the spouse overall minimum benefit, effective the month in which the spouse attains retirement age:

(1) Months in which the spouse O/M benefit is completely or partially deducted because of the employee's or spouse's excess earnings:

(2) Months after entitlement to a spouse O/M benefit ends for any reason;

(3) Months in which a spouse has in her care the employee's child who is under 16 years old or disabled before age 22;

(4) Months in which a DIB O/M benefit is not payable because the employee refused rehabilitation service (see § 229.81 of this part).

§ 229.52 Age reduction when a reduced age O/M is effective before DIB O/M.

If an employee received a reduced age O/M before the effective date of a DIB O/M, the PIA amount for the DIB O/M is reduced as if the employee had attained retirement age on the effective date of the DIB O/M.

§ 229.53 Reduction for social security benefits on employee's wage record.

The total annuity rate under the overall minimum is reduced, but not below zero, by the total amount of the social security benefits being paid to all family members on the employee's wage record.

§ 229.54 Reduction for social security benefit paid to employee on another person's earnings record.

The employee PIA amount under the overall minimum, after any age reduction, is reduced, but not below zero, by the amount of any social security benefit being paid to the employee on another person's earnings record.

§ 229.55 Reduction for spouse social security benefit.

A spouse benefit under the overall minimum, after any adjustment for the family maximum and for age, is reduced, but not below zero, by the amount of any social security benefit being paid to the spouse on other than the employee's earnings record. If the social security benefit is equal to or higher than the spouse overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the spouse is not included, if it would result in a higher overall minimum rate.

§ 229.56 Reduction for child's social security benefit.

A child's benefit under the overall minimum, after any adjustment for the family maximum, is reduced, but not below zero, by the amount of any social security benefit being paid to the child on other than the employee's earnings record. If the social security benefit is equal to or higher than the child's overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the child is not included, if it would result in a higher overall minimum rate.

§ 229.57 Reduction in spouse overall minimum benefit for employee annuity.

If an annuitant is entitled to both an employee annuity on his or her own earnings record and a spouse annuity on a different earnings record, the total overall minimum rates on both earnings records must be higher than the total railroad formula rates for the overall minimum to apply. The spouse overall minimum benefit amount, after adjustment for the family maximum and for age, is reduced by the employee-only overall minimum rate on the spouse's own earnings record (the employee benefit adjusted for age and social security benefits) plus the amount of any social security benefit payable to the spouse on other than the empoyee's earnings record.

§ 229.58 Rounding of overall minimum amounts.

The overall minimum amount for each beneficiary which is not a multiple of $0.10 is rounded to the next lower multiple of $0.10. After reducing each beneficiary's share for other benefits, if the result is not a multiple of $1.00 it is rounded to the next lower multiple of $1.00.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

§ 229.65 Initial reduction.

(a) *When reduction is effective.* A benefit computed under the overall minimum based on disability (DIB O/M) is reduced (not below zero) for any month the employee is under retirement age and is entitled to worker's compensation or disability benefits under a Federal, State, or local law or plan (public disability benefit). The reduction is effective with the month the employee is entitled to worker's compensation or a public disability benefit.

(b) *When reduction is not made.* A reduction for worker's compensation is not made if the law or plan under which the worker's compensation or public disability benefit is paid provides for the reduction of the benefit provided due to entitlement to a social security disability benefit, and so provided on February 18, 1981.

(c) *Amount of reduction.* The reduction in the DIB O/M for worker's compensation or public disability benefit equals the difference between:

(1) The sum of the monthly DIB O/M rate, including benefits for all family members (subject to the family maximum), plus the monthly worker's compensation or public disability benefit; and

(2) The higher of 80 percent of the employee's average current earnings before becoming disabled or the monthly DIB O/M rate (before reduction for worker's compensation or public disability benefit).

(d) *Average current earnings, defined.* Beginning January 1, 1979, an employee's average current earnings for purposes of this section are the highest of:

(1) The average monthly wage (see § 225.2 of this chapter) used to compute the DIB O/M under the Social Security Act rules which were in effect before 1979; or

(2) One-sixtieth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the 5 consecutive years after 1950 in which the earnings were the highest; or

(3) One-twelfth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the year of highest earnings in the period from 5 years before through the year in which the employee became disabled. The result is rounded to the next lower multiple of $1.00.

§ 229.66 Changes in reduction amount.

(a) *Change in DIB O/M.* The amount of the worker's compensation or public disability benefit reduction does not change when there is an increase in the DIB O/M rate because of an amendment or cost of living increase. However, the reduction amount does change if there is a change in the family members included in the DIB O/M. When the number of family members changes and the DIB O/M is still payable, the amount of the reduction is recomputed using the DIB O/M rate, including the changed family group, as if the new family composition had existed when the worker's compensation or public disability benefit reduction first applied. However, this new reduction is not effective until the date of the change of the family group. The worker's compensation or public disability benefit and average current earnings are the same as those used before the change in the family group.

(b) *Change in amount of worker's compensation/public disability benefit.* The amount of the reduction for worker's compensation or public disability benefit changes when there is a change in the amount of the worker's compensation or public disability benefit. If the worker's compensation or public disability benefit increases, the

change in the reduction amount is effective with the month of the increase. If the worker's compensation or public disability benefit decreases, the change in the reduction amount is effective with the month of the decrease, no matter when the notice of the decrease is received.

§ 229.67 Redetermination of reduction.

(a) *General.* All cases reduced for worker's compensation or public disability benefit are recomputed in the second year after the year the reduction was first applied and every third year after that. The redetermined rate is effective with January of the year after the year the redetermination is made. The redetermined reduction is used only if it provides an annuity rate that is higher than the previous annuity rate.

(b) *Redetermined average current earnings.* The average current earnings amount used in redetermining a worker's compensation or public disability benefit reduction is determined by multiplying the initial average current earnings amount by:

(1) The average total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year or redetermination, divided by the average total wages for 1977 or, if later, the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00; or

(2) If the reduction was first computed before 1978, the average taxable wages reported to the Secretary of Health and Human Services for the first quarter of 1977, divided by the average taxable wages for the first quarter of the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00.

§ 229.68 Reduction of DIB O/M.

A reduction for entitlement to worker's compensation or a public disability benefit is applied after the DIB O/M is reduced for age and the family maximum. The spouse and child O/M benefits are first reduced proportionately. The employee O/M benefit is decreased by any remaining reduction amount.

Subpart H—Miscellaneous Deductions and Reductions

§ 228.80 Earnings restrictions.

The O/M may be reduced due to earnings from employment or self-employment in the same manner as a social security benefit. These restrictions on earnings are found at subpart E of part 404 of this chapter. Earnings can never reduce an employee's benefit below the railroad formula rate less the amount that those benefits would be reduced by earnings.

§ 229.81 Refusal to accept vocational rehabilitation.

The DIB O/M is not payable for any month in which the disabled employee refuses, without good reason, to accept vocational rehabilitation services available under an approved state program. A disabled child's benefit under the O/M is not payable for any month in which the child refuses, without good reason, to accept such vocational rehabilitation services, unless the child is a full-time student.

§ 229.82 Failure to have child in care.

(a) *General.* The full amount of the spouse overall minimum benefit is not payable for any month a spouse, who is included in the overall minimum because he or she has a child in his or her care, is under retirement age and is no longer caring for an eligible child. However, if the spouse is at least 62 years old, a reduced spouse annuity or a reduced overall minimum benefit is payable if the spouse has stated that he or she will accept a reduced benefit.

(b) *Report required.* When the overall minimum, which includes a benefit for a spouse who has the employee's child in his or her care, is payable, both the employee and spouse are responsible for reporting when the child leaves the spouse's care. The report is due before the benefits are paid for the second month after the first month in which the child is no longer in the spouse's care.

(c) *Penalty for failure to report.* If the employee or spouse does not report the fact that a spouse included in the overall minimum no longer has an eligible child in his or her care within the time limit shown in paragraph (b) of this section, a penalty is deducted from the overall minimum amount, unless there is a good reason for the person's failure to report. The penalty deduction for the first failure to make a timely report equals the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the second failure to make a timely report is twice the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the third and later failures to make a timely report is three times the amount of the overall minimum increase for the first month in which a report should have been made or, if less, the overall minimum increase times the number of months for which a timely report was not made.

§ 229.83 Deportation.

The age DIB O/M is not payable for any month after the month the Board receives notice that the employee has been deported for a reason shown in section 202(h) of the Social Security Act. This restriction no longer applies if the employee is later legally admitted to the United States for permanent residence.

§ 229.84 Conviction for subversive activities.

If a person is convicted of subversive activities (under chapter 37, 105, or 115 of title 18 of the U.S. Code or section 4, 112, or 113 of the Internal Security Act of 1950, as amended), the court may order that earnings in the year of the conviction and previous years are to be disregarded in determining whether the person is entitled to social security benefits. These earnings would also be ignored in determining entitlement to the age or DIB O/M.

§ 229.85 Substantial gainful activity by blind employee or child.

A blind employee or child who is 55 years old or older is entitled to an O/M benefit based on disability while he or she is working in substantial gainful activity that does not require skills or ability used in his or her previous work. However, the DIB O/M or child's O/M benefit is not payable for any month in which the employee or child works in any type of substantial gainful activity which requires skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time.

Subpart I—Payment of Overall Minimum Rate

§ 229.90 Proportionate shares of overall minimum.

When both the employee and the spouse are entitled to annuities and the overall minimum rate is higher than the railroad formula rate, the overall minimum amount must be divided between the employee and spouse. The employee receives two-thirds of the total O/M rate. The spouse receives one-third of the total O/M rate.

§ 229.91 Payment of the overall minimum for part of a month.

(a) *Employee annuity payable for part of a month.* If an employee annuity begins after the first day of the month, the O/M amount payable for the partial

month is 1/30 of the monthly rate times the number of days in the partial month.

(b) *Spouse annuity payable for part of a month*—(1) *Spouse not included in O/M before beginning date of spouse annuity and O/M applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month, and the spouse is not includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date exceeds the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the higher of the railroad formula or the O/M rate, without the spouse included, times the number of days in the month before the spouse annuity begins, plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(2) *Spouse included in O/M before beginning date of spouse annuity and the O/M continues to apply.* If a spouse annuity begins after the first day of a month, and the spouse is includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date continues to exceed the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M rate, with the spouse included, times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(3) *O/M rate applies before beginning date of spouse annuity and the railroad formula applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month and the O/M rate applies to the family group, with or without the spouse included, before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date is less than the amounts payable using the formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's railroad formula rate times the number of days in tne month beginning with the spouse's annuity beginning date.

Dated: September 30, 1993.

By authority of the Board.

For the Board:

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93-24689 Filed 10-14-93; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Methcathinone Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place methcathinone into Schedule I of the Controlled Substances Act (CSA). This action is based on findings made by the DEA Administrator, after review and evaluation of the relevant data by both DEA and the Acting Assistant Secretary for Health, Department of Health and Human Services, that methcathinone meets the statutory criteria for inclusion in Schedule I of the CSA. Since this substance has been temporarily scheduled in Schedule I, the regulatory control mechanisms and criminal sanctions of Schedule I continue to be applicable to the possession, manufacture, distribution, importation and exportation of this substance.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On April 28, 1993, in a notice of proposed rulemaking published in the **Federal Register** (58 FR 25788) and after a review of relevant data, the DEA Administrator proposed to place methcathinone into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). Prior to that time, the DEA Administrator submitted data which DEA gathered regarding methcathinone to the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation and a scheduling recommendation for methcathinone from the Assistant Secretary for Health.

Methcathinone had been temporarily placed into Schedule I of the CSA by the DEA Administrator on May 1, 1992 for a period of one year (57 FR 18824) using the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)). The temporary scheduling of methcathinone subsequently was extended for six months until November 1, 1993 (58 FR 25934). The temporary scheduling was based on a finding by the DEA Administrator that such scheduling was necessary to avoid an imminent hazard to the public safety.

By letter dated August 31, 1993, the DEA Administrator received the scientific and medical evaluation and scheduling recommendation for methcathinone from the Acting Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. The Acting Assistant Secretary recommended that methcathinone be placed into Schedule I of the CSA based on a scientific and medical evaluation of the available data.

The notice of proposed rulemaking for methcathinone provided the opportunity for interested parties to submit comments, objections or requests for a hearing regarding the scheduling of methcathinone. No comments, objections or requests for a hearing were received regarding methcathinone

Methcathinone has a chemical structure similar to that of methamphetamine and cathinone. All forms of methamphetamine have been controlled in Schedule II of the CSA since 1971. Cathinone was placed in Schedule I of the CSA of February 14, 1993.

In preclinical studies, methcathinone hydrochloride produces pharmacological effects and appears to have an abuse potential similar to that of the amphetamines. Methcathinone hydrochloride increases spontaneous rodent locomotor activity, potentiates the release of radiolabelled dopamine from dopaminergic nerve terminals in the brain and causes appetite suppression. In drug discrimination studies, methcathinone hydrochloride evokes both (+)=amphetamine and cocaine induced appropriate responding. When examined in particular pharmacological assays for psychomotor stimulant-like activity, both the d and the l enantiomeric forms of methcathinone hydrochloride have been found to be pharmacologically active. In these assays, the l-form of methcathinone is more active than either d=methcathinone or (+)=amphetamine. Racemic methcathinone hydrochloride is intravenously self-administered by baboons, thus indicating that methcathinone produces reinforcing effects in this laboratory animal and suggesting that this drug has a potential for abuse in the human population.

To date, the abuse of methcathinone has been primarily documented in Michigan and Wisconsin. The abuse of methcathinone is believed to have originated in Michigan in 1989. Since that time, the abuse of methcathinone in Michigan has increased substantially, almost exclusively in the Upper Peninsula of the state. Methcathinone abuse spread from Michigan into Wisconsin approximately in the Fall of 1992. Health officials in Michigan and Wisconsin have encountered abusers of methcathinone. There have been a number of documented emergency room cases involving the purported abuse of methcathinone. Drug abuse treatment centers in Marquette and Iron Mountain, Michigan, as well as several psychiatric treatment centers in Wisconsin have reported encounters with methcathinone abusers.

The principal form of methcathinone distributed and abused is the hydrochloride salt of the 1-enantiomer, which exists as a white to off-white, chunky powdered material. It is usually sold as itself under such street names as "Cat" and "Goob". Less often it is passed off as methamphetamine under such names as "Crank" or "Speed". The most common route of administration is via nasal insufflation. Other routes of administration include oral ingestion, intravenous injection and smoking. Methcathinone is abused in binges lasting two to six days. During this time, methcathinone is repeatedly administered, resulting in the daily administration of amounts surpassing one or two grams. The methcathinone binge resembles amphetamine binges in that the abuser does not sleep or eat and takes in little in the way of liquids. The methcathinone binge is followed by a "crash" characterized by long periods of sleep, excess eating and, in some cases, depression.

Methcathinone is abused for its psychomotor stimulant effects. It is reported by abusers to produce such desirable effects as a "burst of energy", "headrush", "bodyrush", a "speeding of the mind", an "increased feeling of self-confidence" and "euphoria". Abusers have also reported that methcathinone produces unpleasant effects such as paranoia, hallucinations, anxiety, tremor, insomnia, malnutrition, weight loss, dehydration, sweating, stomach pains, nose bleeding and body aches. Following the crash, some individuals have experienced depression with or without thoughts of suicide.

Methcathinone hydrochloride is produced for street distribution in clandestine laboratories. Between June, 1991 and August, 1993, 27 active or inactive clandestine methcathinone laboratories were seized by Federal, state and local law enforcement officials in Michigan. Since January, 1993, at least five clandestine methcathinone laboratories have been encountered in Wisconsin. In August 1992 a clandestine methcathinone laboratory was seized in Seattle, Washington. In June 1993 a clandestine methcathinone laboratory was seized in Illinois. In September 1993 four clandestine methcathinone laboratories were seized in Indiana.

Methcathinone has been encountered by law enforcement officials in Michigan, Wisconsin, Washington, Illinois and Missouri. Michigan State Police obtained the first street sample of methcathinone in February, 1991. Since that time there have been over 75 encounters of methcathinone by Federal, state and local law enforcement officials in Michigan. Methcathinone was first encountered in Wisconsin in March 1992. Since October 1992, there have been more than 30 Federal, state or local law enforcement encounters of methcathinone in Wisconsin.

The Food and Drug Administration (FDA) has notified DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug and Cosmetic Act for methcathinone. A search of the scientific and medical literature revealed no indications of current medical use of methcathinone in or outside of the United States.

Based upon the investigation and review conducted by DEA and upon the scientific and medical evaluation and recommendation of the Acting Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, received in accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811(a) and (b), finds that:

(1) Methcathinone has a high potential for abuse;
(2) Methcathinone has no currently accepted medical use in treatment in the United States; and,
(3) Methcathinone lacks accepted safety for use under medical supervision.

These findings are consistent with the placement of methcathinone into Schedule I of the CSA.

All regulations applicable to Schedule I substances continue to be effective as of October 15, 1993 with respect to methcathinone. This substance has been in Schedule I pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h) since May 1, 1992. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports methcathinone or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* Methcathinone must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of methcathinone must comply with the requirements of § § 1302.03–1302.05, 1302.07 and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for methcathinone shall submit applications pursuant to § § 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of methcathinone shall take an inventory of all stocks of this substance on hand pursuant to § § 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to § § 1304.21–1304.27 of title 21 of the Code of Federal Regulations shall maintain such records on methcathinone.

7. *Reports.* All registrants required to submit reports pursuant to § § 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding methcathinone.

8. *Order Forms.* All registrants involved in the distribution of methcathinone must comply with the order form requirements of § § 1305.01–1305.16 of title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of methcathinone shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to methcathinone not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

The Administrator of the DEA hereby certifies that the permanent placement of methcathinone into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of a substance with no currently approved medical use in the United States.

This final rule is not a major rule for the purposes of Executive Order 12291 (46 FR 13193) of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. Accordingly, this drug scheduling action is not subject to the provisions of Executive Order 12778 which are contingent upon review by OMB.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this scheduling action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11(f) is amended by redesignating paragraphs (f)(3) through (f)(5) to (f)(4) through (f)(6) and by adding a new paragraph (f)(3) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(3) Methcathinone (Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinone; AL–464; AL–422; AL–463 and UR1432), its salts, optical isomers and salts of optical isomers . . . 1237.

* * * * *

§ 1308.11 [Amended]

3. Section 1308.11(g) is amended by removing paragraph (g)(3) and redesignating paragraphs (g)(4) and (5) as (g)(3) and (4).

Dated: October 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–25279 Filed 10–14–93; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning October 1, 1993. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in August 1993 through October 1993. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 (202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR § 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning October 1, 1993, the interest charged on the underpayment of taxes will be at a rate of 7 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the October 1, 1993, through December 31, 1993, quarter.

Under ERISA section 5006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC

publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in August of 1993 through October of 1993.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the right and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988 & Supp. I 1989), as amended by sec. 12021, Pub. L. 101–508, 104 Stat. 1388, 1388–573.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning October 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
October 1, 1993.	December 31, 1993.	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in August of 1993 through October of 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate[1]
* * * * *	
August 1993	5.30
September 1993	5.06
October 1993	4.80

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning October 1, 1993, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
October 1, 1993.	December 31, 1993.	7

Issued in Washington, DC, this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–25404 Filed 10–14–93; 8:45 am]

BILLING CODE 7708–01–M

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29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of

Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal.

Under the PBGC's final rule issued on September 28, 1993, the PBGC will publish separate interest assumptions for lump sum valuations and for annuity valuations, and will publish the same sets of lump sum and annuity assumptions under both parts 2619 and 2676. The PBGC will adjust these assumptions as necessary to reflect changes in financial and annuity markets, but will publish them each month irrespective of whether there has been any change in the assumptions. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in November 1993, and to multiemployer plans with valuation dates in November 1993.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Peter H. Gould, Senior Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This rule adopts the interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determines the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

On September 28, 1993, the PBGC published a final rule revising its actuarial assumptions for valuing annuity benefits under terminating single-employer plans and multiemployer plans that have undergone a mass withdrawal. The amended regulations prescribe that valuations of benefits payable as annuities would employ (1) new tables of mortality assumptions, replacing the tables previously prescribed by the PBGC, (2) a new table of specific administrative expense ("loading") assumptions, replacing the prior regulations' incorporation of administrative expense charges via a reduction in the PBGC's interest assumptions, and (3) a new "select and ultimate" structure of interest assumptions, replacing (in the case of the single-employer regulation) the use of interest assumptions based on the expected date on which the benefit being valued was assumed to enter pay status. Under the regulations, the new assumptions and methods do not apply to the PBGC's valuation of lump sum benefits; however, the PBGC adopted a unisex version of its historical mortality table for valuing lump sum benefits.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

Under the amended regulations, it will be necessary for the PBGC to issue two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions will apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 the first sets of interest rates and factors for valuing benefits in plans that terminate subject to the amended regulations, *viz.*, those single-employer plans that have termination dates during November 1993 and those multiemployer plans that have undergone mass withdrawal and that have valuation dates during November 1993.

For annuity benefits, the interest rates will be 5.60% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25% for the period during which benefits are in pay status and 4.0% during the period preceding the benefits' placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) The new interest assumptions that will be used by the PBGC for valuing lump sums under plans with termination dates during November 1993 are unchanged from the PBGC's single-employer rates in effect during October 1993.

Generally, under the amended regulations as in the past, the interest rates and factors will be in effect for at least one month. However, the PBGC will be publishing its interest assumptions under the amended regulations each month regardless of whether they represent a change from the previous month's assumptions. (In the past, the PBGC published interest assumptions under the single-employer regulation only when there was a change.) The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during November 1993 and of benefits in multiemployer plans terminated by mass withdrawal with valuation dates during November 1993, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an

annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, pension insurance, and pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. In appendix B, entries are added for Rate Set 1 of Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(0)}_{x}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y < n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE.—I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(0)}_{x}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE—II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t, for $t =$		i_t, for $t =$		i_t, for $t =$	
November 1993	.0560	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

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

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

4. In appendix B, entries are added for Rate Set 1 of Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(0)}_{x}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1), shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE—I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11-1-93	12-1-93	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0,n}$ (as defined in § 2676.13(b)(1) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t, prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$ and referred to generally as i_t), assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE—II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t for t=		i_t for t=		i_t for t=	
November 1993	.0560	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–25402 Filed 10–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1993, to December 31, 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6 percent, which will be effective from October 1, 1993, through December 31, 1993. This rate represents no change from the rate in effect for the third quarter of 1993. This rate is based on the prime rate in effect on September 15, 1993.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the

PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table therein a new entry as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
*	*	*	*
10/01/93 ...	12/31/93 ...	9/15/93	6

Issued in Washington, DC, on this 12th day of October 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-25403 Filed 10-14-93; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720-AA15

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Providers, Claims Filing, and Participating Provider Program

AGENCY: Office of the Secretary, DoD.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published Friday October 1, 1993 (58 FR 51227). The final rule publication omitted two attachments to the preamble: first, a report on analysis conducted to support agency consideration of public comments and, second, a list of ambulatory surgical procedures subject to the reimbursement rules in section 199.14(d). Also, the supplementary section of the final rule stated, in error that new ambulatory surgery reimbursement procedures would be implemented January 1, 1994. This document supplies the missing attachments, and corrects the implementation date for the new ambulatory surgery reimbursement procedures.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695-3350.

SUPPLEMENTARY INFORMATION: Accordingly, the supplementary section of the publication on Friday, October 1, 1993, of the final rule which was the subject of FR Doc. 93-24257, is corrected as follows:

In line 10 of the third column on page 51236, change "January 1, 1994" to "April 1, 1994".

Before the list of subjects in the third column on page 51236, add Attachment 1 and Attachment 2 as set forth below.

Dated: October 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Attachment 1—Report on Analysis of Pediatric Professional Services Payments for Office of Assistant Secretary of Defense (Health Affairs)

Lewin-VHI, Inc.

September 1993.

This document transmits to the Office of the Assistant Secretary of Defense (Health Affairs) our report on payments for pediatric professional services for the CHAMPUS program. At your request, this study was undertaken to help evaluate concerns expressed by commenters in response to the December 10, 1992 Proposed Rule on reimbursement of physicians and other individual professional providers.

In summary, the empirical results of our study suggest that the costs of treating children are higher only for a limited number of procedures. Compared to adults, costs for children are higher for procedures that account for 12 percent of CHAMPUS payments to individual providers. This analysis shows a larger volume of physician services where children are significantly less expensive to treat or where there is no difference in costs compared to adults.

I. Background

After publication of the Notice of Proposed Rule Making (NPRM), OCHAMPUS received comments that using Medicare payment rates for children was inappropriate because they do not account for the extra resources required to care for children. Some of these commenters cited the March 1992 Physician Payment Review Commission (PPRC) Annual Report on this subject, which said that "some of the Medicare relative values will likely need to be adjusted when applied to services delivered to children" (PPRC, 1992, p. 80). This situation may occur for these reasons: (1) CPT codes may not distinguish a procedure performed on a child from an essentially different one performed on an adult; (2) the work effort is often higher for young children due to anatomical and physiological differences; and (3) it takes more time because the physician must deal with both parent and the child, and children may also be less cooperative than adult patients. It is important to note that PPRC does not take the position that all services may incur greater costs when performed on children, as evidenced by this statement: "On the other hand, physician work may be less for some services for children." (*Ibid.*, p. 81)

II. Analysis

A. Methods and Data

To be responsive to the commenters, we designed an analysis to examine the statistical evidence of whether children are more expensive to treat than adults, for a given CPT code procedure or for groupings of similar procedures. Because there is no measure of the true economic cost of treating children versus adults, nor even accounting

costs, we think that actual physician charges from the national CHAMPUS claims data are the best proxy for a measure of the cost to a physician of treating a patient.

The assumption behind the use of claims data charges to examine this relationship is that a physician would set higher charges accordingly for a specific procedure if he found from experience that it consistently takes more time and effort to perform the procedure on a child. If a procedure is more work when performed on children, but physicians have historically not reflected that in their charges, it seems unreasonable to expect CHAMPUS to pay more for such procedures.

The research question for this study is whether physicians' services for children are systematically and significantly more expensive than comparable adult services. The null hypothesis for this study can thus be stated as: Children are not more expensive to treat than adults, for a given CPT code procedure or for groupings of similar procedures. To test this hypothesis, we compared average charges across age groups, for a particular CPT code,[1] through the use of dummy age group variables in a regression model. This model also served to explore the relationship of charges to age to help ascertain a logical threshold criteria for "children's" or "pediatric" costs, since none of the commenters cited any standards on the specific age in question. In the regression model on charges, we needed to include independent variables that could affect charges other than the age of the patient and that CHAMPUS already adjusts payments for—specifically, cost-of-living as measured by geography. For accuracy, we used the actual CPT-specific and locality-specific Geographic Adjustment Factors (GAF)[2] for each claim, rather than a locality average. In addition to the GAF, the only independent variables were dummy variables of age groups (0–2, 3–5, 6–17 and 18+) which will show whether there is a statistically significant difference in charges by age group. Significant, positive coefficients on these dummy variables would cause one to reject the null hypothesis that there is no difference in costs of treating children. In other words, the statistical evidence would support the position that children are more expensive to treat than adults, as measured by physician charges.

The unit of observation was a single service, or procedure, as indicated by a line-item on a claim. Each claim was represented in the regression by the number of services submitted on the claim.[3] To eliminate erroneous data, we deleted all claims that had "number of services" greater than four for surgical procedures and diagnostic tests, and greater than twelve for evaluation and management (E&M) services.[4] The most recent claims data we had available for this study consisted of all CHAMPUS professional services claims incurred during the year's time period of July 1, 1991 through June 30, 1992. In order to assure data reliability, we limited the analysis to CPT codes that had at least 50 annual services for children age 0–2 and 50 for adults over the time period.

B. Preliminary Analysis of Individual CPT Codes

As exploratory data analysis, we estimated the following regression model:

$$CHARGE = \alpha+\beta(GAF)+\beta(AGE\ 0\text{–}2)+\beta(AGE\ 3\text{–}5)+\beta(AGE\ 6\text{–}17)+\varepsilon$$

where AGE 0–2, etc. are dummy variables coded 0 or 1 to reflect the age group of a given claim, and GAF is the GAF specific to the CPT and locality of the claim. The coefficients on the age dummies thus reflect the difference in price from the omitted category (adults), and their significance is automatically calculated in the typical statistical software output. A significant coefficient shows that an age group's average charges are significantly different than average charges for adults, for a particular CPT code.

We ran separate regressions for each CPT code, using about four dozen CPT codes that were selected across the entire CPT code range (i.e., a sampling from all different body systems). We chose the top two to three CPT codes, according to dollar volume, per body system to model because they should be most representative of the economic impact for particular body system area. As mentioned above, the unit of observation in these regression analyses was a single service as represented by a line-item on a claim, and only CPT codes with at least 50 annual services for both children aged 0–2 and for adults were used for modeling.

This exploratory work helped determine whether there appeared to be any evidence at all to support the position that children are more expensive to treat for the same CPT code, before conducting more extensive analyses. The preliminary analysis indicated that there did appear to be significantly higher charges for children in certain ranges of procedures (cardiovascular, ocular, auditory, physical therapy), significantly lower or no difference in charges in other body system areas (skin, musculoskeletal, respiratory, nervous, most diagnostic tests, speech therapy, psychiatric, and visits), and indefinite results in other areas due to inconsistent effects (digestive, urinary-genital, pulmonary, eye and ear tests).

For completeness, we also estimated regression equations for the specific procedures mentioned in the 1992 PPRC report. We did not include the procedures in our analysis for high volume services because none of them had sufficient service volume. Specifically, these services are: spirometry (94010 and 94060), bimalleolar ankle fracture (27808, 27810 and 27814) and percutaneous renal biopsy (50200). The results for these specific examples do not support the argument for higher children's payments:

- Among the ankle fracture procedures, CPT code 27814 had no claims submitted in the entire year for anyone under the age of six and the other two codes (28808 and 27810) had only 1–3 claim submitted for children under six; the regressions showed no significant differences in charges for any age group under 18 years compared to adults;
- The kidney biopsy (CPT code 50200) also had few pediatric claims (only 3 claims in each age group 0–2 and 3–5, and 28 claims for age 6–17) over the year; there were no significant differences in charges;

[1] We used an ordinary-least-squares regression model because, at this stage of the analysis, we did not want to define only two age group categories, which would be necessary if we used a single T-test comparing two group means.

[2] The GAF is an index that reflects a physician's expenses (work, practice costs and malpractice insurance) for a particular CPT code in relation to the national average for all procedures and geographic areas, and is thus centered at 1.0. The GAF was calculated by first determining the CHAMPUS locality by matching a claim's zip code to the zip/locality crosswalk file, and then multiplying the corresponding GPCIs with the proportions of work, practice expense and malpractice costs determined from the Medicare RVUs for that CPT code.

[3] That is, a claim for three visits would be represented by three observations in the regression (i.e., receive three times the weight as a claim for only one visit), and the dependent variable would be the average charge for those three visits.

[4] These criteria were chosen after examining frequency distributions of the number of services on a claim by the type of procedure. Claims with excessive numbers of services on them often had extremely low average charges (e.g., less than $5), indicating data errors. These criteria insured that the vast majority of legitimate claims would be included in the analysis. We did not want, however, to give each claim a weight of "one" in the regression because that could conceivably bias the results if the average charge on a claim submitted for several services systematically differed from claims submitted for only one service. This would be especially relevant for medical, rather than surgical, procedures.

• The two spirometry codes (CPT codes 94010 and 94060) had sufficient claims (more than 75 in each child's age group). For both procedures, all children's age groups had significantly lower average charges than adults (all p<=.02 except one p=.06 for age 3–5).

C. Analysis Integrating All Procedures

Because the preliminary results indicated that further analysis was warranted, we developed a model that would estimate the difference by age group combining similar procedures together, in order to assess the overall situation for all services rather than just a few. Further research was also advisable because it would be possible for aggregate results to differ from the few sampled CPT codes, even though they were the highest volume procedures. Furthermore, we needed to standardize the measurement of the cost effects across dissimilarly-priced procedures because the preliminary regressions measured procedure-specific effects in dollars (i.e., a $15 difference would not be important for a $3,000 procedure but would be for a service that average $30 in price).

We used the percentage difference in charges (children compared to adults) as a standardized measure of differential effects by age and as the best measure available to us that reflects qualitative judgment on the "fairness" of a price. For example, we hypothesized that a physician would judge a price too low if it were 20 percent below the appropriate level, whether that level was $30 or $3000, even though this difference would amount to only $6 in the former case—an amount that would be trivial for a major procedure. Also, percentage differences easily lend themselves to actual payment level determinations, if necessary. The dependent variable was thus defined as the ratio of an individual claim's charge to the average adult charge for that particular procedure. This is a type of index centered at one (i.e., a value of 1.1 would be the dependent variable for a claim with a charge of $110 if the average charge was $100 for adults aged 18+). In order to easily incorporate the GAF into this multi-procedural model, we first geographically standardized all charges by dividing them by the appropriate GAF. After this standardization, the adult average for each CPT code was calculated and merged onto the original claims, and the dependent variable calculated as the ratio to this procedure-specific adult average.[5] Thus, the model was:

$$\frac{\text{Standardized Charge}}{\text{Adult Avg. Std. Charge}} = \alpha + \beta(\text{Age}0-2) + \beta(\text{Age}3-5) + \beta(\text{Age}6-17) + \varepsilon$$

and the coefficients can be interpreted as the percentage difference in that age group's average charges compared to adults.[6]

The advantage of this form of the dependent variable is that dissimilar CPT codes can be included in the same regression model. We then ran separate regressions for each body system, including all claims for CPT codes that had at least 50 claims for ages 0–2 and 50 adult claims.[7] We also eliminated any CPT codes that are not based on Medicare RVUs, and codes that already have a pediatric age category in the definition. We ran separate regressions by body system because we thought this best represented the clinical and economic problem, since physician specialists tend to work in one body area.

III. Regression Results

Table 1 shows the resulting regression coefficients for each grouping of procedures, and those that are significant at the p=.05 level or better are marked. The columns marked "# of Codes" and "# of Services" refer only to the sample used in the regressions, not in the entire claims data nor in the entire CPT manual. Note that there were only a few body system categories that had more than 10 codes with at least 50 claims for children aged 0–2. The end of the table presents results for the specific CPT codes cited in the PPRC report as procedures that theoretically require more work when performed on children. We also ran separate regressions on non-physicians for a few groups where many non-physicians bill CHAMPUS (physical, speech and psychiatric therapies). A summary of the results is: Procedures for which the Cost for Children Aged 0–5, Compared to Adults, Is:

• Significantly Higher: cardiovascular, digestive, ocular, auditory, IV infusion therapy/dialysis, chemotherapy

• Significantly Lower: integumentary, musculoskeletal, nervous, speech therapy, otorhinolaryngology, visits

• Not Significantly Different: respiratory, urinary-genital, diagnostic gastroenterology

• Mixed Results: opthalmology, diagnostic cardiology, pulmonary, neurology, psychiatric

The mixed results are procedure categories in which one age group shows different results from the others, rather than a smooth and consistent linear pattern. Or, in the case of pyschiatric procedures, the results are not consistent across specialty types (psychiatrists versus psychologists versus counselors), as one would naturally expect for a true effect.

IV. Impact Analysis for CHAMPUS Pediatric Payments

To put the above results into payment and policy context, we then calculated the following two types of cost information: (1) Estimates of the impact on CHAMPUS allowed charges if the CMACs for certain pediatric procedures were increased; and (2) a breakdown of current CHAMPUS allowed charges for children aged 0–5 by type of procedure.

Table 2 presents estimates of the volume-weighted increase in CMAC levels that would occur based on the regression model results presented above. In performing these calculations, we assumed that CMAC levels for children would have percentage increases exactly equal to the value of the significantly positive regression coefficients, and that there would be no decreases for the coefficients that were significantly negative. The estimates are based on service volumes from the July 1991 through June 1992 claims data and the March 1, 1993 CMAC levels. The impact on CHAMPUS expenditures was estimated for several different scenarios: if payments were increased for several different age groupings (i.e., if payments were increased for ages 0–2 only, 0–5 only, or 0–17), and payment increases for all CPT codes in the relevant body systems versus only the codes used in the regressions. The latter would be close to a revised payment policy only for procedures with at least 50 annual claims. These estimates of the impact on total CHAMPUS payments are probably somewhat high for two reasons: (1)

[5] For adults as a group, this ratio would thus average to 1.0. Our computations were thus verified in the regression models when the estimated intercept was 1.0.

[6] For example, a coefficient of .25 for the ageo-2 dummy variable would mean that charges for children aged 0–2 were 25 percent higher than for adults, on average.

[7] Because the adult average charge that forms the denominator of the dependent variable is calculated on a CPT level, it is still important to have a sufficient number of claims for statistical stability, so we retained the 50-claim criteria.

Because they are based on percentage increases to CMACs, these amounts would decrease as the CMAC levels decline over the next few years; and (2) no reduction was taken in these dollar figures for copayments and deductibles paid by the beneficiary.

We then categorized CHAMPUS allowed charges to non-institutional providers for children aged 0–5 from the July 1991 to June 1992 claims data.[8] Results are presented in Table 3. The first four categories in Table 3 are all procedures for which the consideration of different payments for pediatric services is not applicable, either because there are no CMACs for these codes and payment levels are set by the FIs, because the CPT code definition is already defined as specific to children, or other types of services that would not be relevant for consideration due to their nature (i.e., radiology and pathology).

To summarize Table 3:

- Pediatric services with charges significantly *higher* than adults account for only 12 percent of current CHAMPUS payments for children aged 0–5.
- The counter-effect—non E&M services where pediatric charges are significantly lower or no different from adults—occurs in services accounting for a greater percentage of current payments (17 percent) than the significantly higher category.
- E&M services alone account for almost half (48 percent) of CHAMPUS payments to this age group. This service category also had charges significantly lower than adults, which is probably due to specialty differentials more than any surgical category—that is, pediatricians may charge less for office visits than the physicians who treat adults)[9].
- CPT codes that already have a definition by age group (e.g., tonsillectomies, circumcisions)—and thus presumably have appropriate RVUs for the pediatric service—account for 8.5 percent of total payments for children aged 0–5.
- Codes without CMACs (anesthesia, unlisted procedures, allergy, immunizations, etc.) account for 9 percent of payments, and radiology and pathology another 5 percent.

V. Conclusions

This study compared pediatric to adult charges, within CPT procedure code, as a method for measuring treatment "cost" differentials. The empirical results suggest that children may be more expensive to treat for certain procedures but are less expensive for others. The results indicate that there are more services for which children are significantly less expensive to treat than adults, or where there is no difference in costs, than there are services for which children are more expensive than adults.

In terms of CHAMPUS total payments for children aged 0 to 5, the procedure categories that are estimated to have significantly higher costs for treating children account for only 12 percent of payments. By contrast, 56 percent of payments are for services with estimated significantly lower costs for children (48 percent are visits and the other 8 percent both surgical and medical procedures), and another 9 percent of payments are in categories with no estimated difference. The remainder of payments are in miscellaneous categories where differential payment rates are not pertinent or where rates are currently not determined by the Medicare fee schedule values.

Significantly lower costs for treating children are most evident in medical rather than surgical procedures (e.g., speech therapy, neurology and otorhinolaryngology diagnostic tests), and for visit codes. The latter effect may be a specialty pricing effect, since a larger volume of children's visits may be performed by pediatricians or family practitioners, rather than more expensive specialists. One would not expect such a specialty effect to account for some of the differences seen in the surgical procedures, however. Furthermore, CHAMPUS has historically not used specialty differentials in setting payment rates.

The results show that physician estimated "costs" for cardiovascular system surgical procedures (but not diagnostic tests) and physical therapy are most likely to have large and significant differentials for pediatric patients—about 25 to 33 percent higher than adult treatment costs. Also, eye surgeries and intravenous infusion therapy/dialysis procedures also are estimated to have considerably higher "costs" for children than adults, but the effect is strongest for children less than three years old.

The impact analysis of hypothetical increases in payments for selected pediatric procedures shows projected increases in CHAMPUS professional service outlays of about $1,000,000 to $3,000,000 per year, depending on which age groups or claims volume criteria is used—this would be approximately a 1 to 3 percent increase in pediatric payments. The projected cost increase figure, however, does not account for administrative and operational costs that would be necessary to develop and implement a new physician payment system based on the patient's age.

TABLE 1.—ANALYSIS OF CHAMPUS PROFESSIONAL SERVICE CHARGES: REGRESSIONAL RESULTS BY BODY SYSTEM

Body system	CPT code range	Regression sample		Age regression coefficients		
		No. of codes	No. of services	0–2 years	3–5 years	6–17 years
Integumentary	10000–19999	24	89,894	**−.042	−.018	**−.036
Musculoskeletal	20000–29999	8	16,576	**−.111	**−.045	**−.023
Respiratory	30000–32999	6	11,828	.019	.001	.024
Cardiovascular	33000–37799	7	20,418	**.344	**.261	**.237
Digestive	40000–49999	6	20,029	**.053	**.100	*.032
Urinary-Genital	50000–59999	8	14,465	.027	−.038	.007
Nervous	61000–64999	4	6,379	**−.132	**−.163	**−.117
Ocular	65000–68899	4	1,474	**.481	*.167	**.172
Auditory	69000–69999	5	24,566	**.139	**.122	**.106

[8] Services for durable medical equipment, clinical lab, drugs, facilities and supplies were deleted from these figures, as well as claims using CHAMPUS-unique codes for services under the Program for the Handicapped.

[9] Theoretically, one would expect no difference between adult and pediatric charges for E&M services, since the CPT coding system itself allows physicians to select the appropriate code for billing the intensity or work required of a visit. Thus, if a physician felt pediatric visits were more work, a higher-valued CPT visit code could already be chosen to reflect that increase. Our regression analysis measured differences within CPT codes.

TABLE 1.—ANALYSIS OF CHAMPUS PROFESSIONAL SERVICE CHARGES: REGRESSIONAL RESULTS BY BODY SYSTEM—Continued

Body system	CPT code range	Regression sample		Age regression coefficients		
		No. of codes	No. of services	0–2 years	3–5 years	6–17 years
IV Infusion therapy/dialysis	90780–90781, 90935–90999	4	6,710	**.286	*.165	.048
DX Gastro-enterology	91000–91299	2	618	−.031	−.087	*−.130
Speech therapy—Physicians	92507–92508	1	9,438	**−.337	**−.455	**−.263
Speech therapy—Non-physicians	92507–92508	1	10,786	**−.281	**−.191	*−.032
Ophthalmology	92000–92499	8	75,963	*.014	**−.086	**−.043
Otorhino-laryngology	92500–92599	11	67,801	**−.166	**−.145	**−.116
DX Cardiovascular	92950–93999	20	306,110	**−.058	**.047	**.061
Pulmonary	94000–95799	20	100,528	**.026	**−.141	**−.090
Neurology	95805–95999	5	44,635	**−.155	.026	**.038
Chemotherapy	96400–96549	5	53,228	**.121	**.251	**.116
Physical therapy—Physicians	97000–97799	12	107,380	**.360	**.302	−.053
Physical therapy—Non-physicians	97000–97799	7	46,175	−.004	**.030	**.045
Visits	99200–99499	39	452,185	**−.051	**−.091	**−.025
Psychiatric—Physicians	90800–90899	4	132,203	.011	**.030	**.051
Psychiatric—Psychologists	90800–90899	4	149,913	**−.084	**−.013	**−.008
Psychiatric—Counselors	90800–90899	2	153,810	.014	**.038	**.026
Closed bimalleolar ankle fracture	27808	1	81	.113	−.672	.103
Closed bimall. ankle FX w/man	27810	1	43	.160	***	.179
Open treatmt of bimall. ankle FX	27814	1	329	***	***	.106
Percutaneous renal biopsy	50200	1	194	−.102	.240	−.002
Spirometry	94010	1	24,522	*−.098	**−.223	**−.114
Spirometry and bronchospasm eval.	94060	1	13,429	*−.125	−.068	**−.054

*p <=.05.
**p <=.01.
***=No claims.

Note: Due to the large claims volume, the regression sample for visits and psychiatric procedures was a 25 percent random sample of all appropriate claims. Also, the visits sample only included codes from the new 1992 "99000" series, which were used during a six-month time period of these claims data (i.e., .50×.25=.125 random sample).

TABLE 2.—CHANGES IN CHAMPUS EXPENDITURES DUE TO INCREASED PEDIATRIC PAYMENT

	No. of codes	If CMACs were increased for:		
		Ages 0–2	Ages 0–5	Ages 0–17
If payments were increased for all CPT codes in a body system:				
Significant groups*	831	$1,225,000	$1,638,000	$2,268,000
Borderline results**	122	37,000	58,000	194,000
Psychiatric***	30	0	23,000	425,000
Total	983	1,262,000	1,719,000	2,887,000
If payments were increased only for codes with 50+ claims per year:				
Significant groups*	43	722,000	960,000	1,165,000
Borderline results**	35	33,000	54,000	160,000
Psychiatric***	4	0	22,000	400,000
Total	82	755,000	1,036,000	1,725,000

* Significant Body Systems: cardiovascular, digestive, ocular, auditory, IV infusion & dialysis, chemotherapy, and physical therapy.
** Borderline Systems: diagnostic cardiology, ophthalmology, pulmonary and neurology.
*** Psychiatric procedures also show borderline or indefinite results (i.e., significant for some ages and/or provider classes and not others), but are shown separately due to their large dollar volume.

TABLE 3.—DISTRIBUTION OF CURRENT CHAMPUS PEDIATRIC (AGE 0–5) PAYMENTS

Type of procedure	Allowed charges	Percent of total
Anesthesia	$6,553,002	5.4
Other codes without CMACs (e.g., '99' codes, allergy, shots)	4,125,550	3.4
Radiology and pathology	5,966,495	5.0
Age-specific CPT codes	10,272,992	8.5
Code groups with no significant difference from adults (respiratory, urinary-genital, DX gastroenterology, pulmonary, psychiatric)	11,181,601	9.2
E&M codes (significantly lower charges)	58,260,079	48.1
Other codes with significantly lower charges than adults (integumentary, musculoskeletal, nervous, ophthalmology, otorhinolaryngology, DX cardiology, neurology, speech therapy)	9,791,759	8.1

TABLE 3.—DISTRIBUTION OF CURRENT CHAMPUS PEDIATRIC (AGE 0–5) PAYMENTS—Continued

Type of procedure	Allowed charges	Percent of total
Codes with significantly higher charges than adults (cardiovascular, digestive, ocular, auditory, IV/dialysis, chemotherapy, physical therapy)	14,940,392	12.3
Total	121,139,280	100.0

Attachment 2

CPT–4 Code Description

10140 Drainage of hematoma
10141 Drainage of hematoma
10180 Complex drainage, wound
11042 Cleansing of skin/tissue
11043 Cleansing of tissue/muscle
11044 Cleansing tissue/muscle/bone
11404 Removal of skin lesion
11406 Removal of skin lesion
11424 Removal of skin lesion
11426 Removal of skin lesion
11444 Removal of skin lesion
11446 Removal of skin lesion
11450 Removal, sweat gland lesion
11451 Removal, sweat gland lesion
11462 Removal, sweat gland lesion
11463 Removal, sweat gland lesion
11470 Removal, sweat gland lesion
11471 Removal, sweat gland lesion
11604 Removal of skin lesion
11606 Removal of skin lesion
11624 Removal of skin lesion
11626 Removal of skin lesion
11644 Removal of skin lesion
11646 Removal of skin lesion
11770 Removal of pilonidal lesion
11771 Removal of pilonidal lesion
11772 Removal of pilonidal lesion
11960 Insert tissue expander(s)
11970 Replace tissue expander
11971 Remove tissue expander(s)
12005 Repair superficial wound(s)
12006 Repair superficial wound(s)
12007 Repair superficial wound(s)
12016 Repair superficial wound(s)
12017 Repair superficial wound(s)
12018 Repair superficial wound(s)
12020 Closure of split wound
12021 Closure of split wound
12034 Layer closure of wound(s)
12035 Layer closure of wound(s)
12036 Layer closure of wound(s)
12037 Layer closure of wound(s)
12044 Layer closure of wound(s)
12045 Layer closure of wound(s)
12046 Layer closure of wound(s)
12047 Layer closure of wound(s)
12054 Layer closure of wound(s)
12055 Layer closure of wound(s)
12056 Layer closure of wound(s)
12057 Layer closure of wound(s)
13100 Repair of wound or lesion
13101 Repair of wound or lesion
13120 Repair of wound or lesion
13121 Repair of wound or lesion
13131 Repair of wound or lesion
13132 Repair of wound or lesion
13150 Repair of wound or lesion
13151 Repair of wound or lesion
13152 Repair of wound or lesion
13160 Late closure of wound
13300 Repair of wound or lesion
14000 Skin tissue rearrangement
14001 Skin tissue rearrangement
14020 Skin tissue rearrangement
14021 Skin tissue rearrangement
14040 Skin tissue rearrangement
14041 Skin tissue rearrangement
14060 Skin tissue rearrangement
14061 Skin tissue rearrangement
14300 Skin tissue rearrangement
14350 Skin tissue rearrangement
15000 Skin graft procedure
15050 Skin split graft procedure
15100 Skin split graft procedure
15101 Skin split graft procedure
15120 Skin split graft procedure
15121 Skin split graft procedure
15200 Skin split graft procedure
15201 Skin split graft procedure
15220 Skin full graft procedure
15221 Skin full graft procedure
15240 Skin full graft procedure
15241 Skin full graft procedure
15260 Skin full graft procedure
15261 Skin full graft procedure
15350 Skin homograft procedure
15400 Skin heterograft procedure
15570 Form skin pedicle
15572 Form skin pedicle
15574 Form skin pedicle
15576 Form skin pedicle
15580 Cross finger flap
15600 Skin flap procedure
15610 Skin flap procedure
15620 Skin flap procedure
15625 Skin flap procedure
15630 Skin flap procedure
15650 Transfer skin pedicle flap
15732 Muscle-skin flap, head/neck
15734 Muscle-skin flap, trunk
15736 Muscle-skin flap, arm
15738 Muscle-skin flap, leg
15740 Island pedicle flap
15750 Neurovascular pedicle
15755 Microvascular free flap
15760 Composite skin graft
15770 Derma-fat-fascia graft
15840 Graft for face nerve palsy
15841 Graft for face nerve palsy
15842 Graft for face nerve palsy
15845 Skin and muscle repair, face
15920 Removal of tail bone ulcer
15922 Removal of tail bone ulcer
15931 Remove sacrum pressure sore
15933 Remove sacrum pressure sore
15934 Remove sacrum pressure sore
15935 Remove sacrum pressure sore
15936 Remove sacrum pressure sore
15937 Remove sacrum pressure sore
15940 Removal of pressure sore
15941 Removal of pressure sore
15944 Removal of pressure sore
15945 Removal of pressure sore
15946 Removal of pressure sore
15950 Remove thigh pressure sore
15951 Remove thigh pressure sore
15952 Remove thigh pressure sore
15953 Remove thigh pressure sore
15956 Remove thigh pressure sore
15958 Remove thigh pressure sore
16015 Treatment of burn(s)
16030 Treatment of burn(s)
16035 Incision of burn scab
19020 Incision of breast lesion
19100 Biopsy of breast
19101 Biopsy of breast
19110 Nipple exploration
19112 Excise breast duct fistula
19120 Removal of breast lesion
19140 Removal of breast tissue
19160 Removal of breast tissue
19162 Remove breast tissue, nodes
19180 Removal of breast
19182 Removal of breast
19260 Removal of chest wall lesion
19318 Reduction of large breast
19328 Removal of breast implant
19330 Removal of implant material
19340 Immediate breast prosthesis
19342 Delayed breast prosthesis
19350 Breast reconstruction
19357 Breast reconstruction
19364 Breast reconstruction
19366 Breast reconstruction
19370 Surgery of breast capsule
19371 Removal of breast capsule
19380 Revise breast reconstruction
20005 Incision of deep abscess
20200 Muscle biopsy
20205 Deep muscle biopsy
20206 Needle biopsy, muscle
20220 Bone biopsy, trocar/needle
20225 Bone biopsy, trocar/needle
20240 Bone biopsy, excisional
20245 Bone biopsy, excisional
20250 Open bone biopsy
20251 Open bone biopsy
20525 Removal of foreign body
20650 Insert and remove bone pin
20660 Apply, remove fixation device
20661 Application of head brace
20662 Application of pelvis brace
20663 Application of thigh brace
20665 Removal of fixation device
20670 Removal of support implant
20680 Removal of support implant
20690 Apply bone fixation device
20900 Removal of bone for graft
20902 Removal of bone for graft
20912 Remove cartilage for graft
20920 Removal of fascia for graft
20922 Removal of fascia for graft
20924 Removal of tendon for graft
20926 Removal of tissue for graft
20955 Microvascular fibula graft
20960 Microvascular rib graft
20962 Microvascular bone graft
20969 Bone-skin graft
20970 Bone-skin graft, pelvis
20971 Bone-skin graft, rib
20972 Bone-skin graft, metatarsal
20973 Bone-skin graft, great toe

20975	Electrical bone stimulation
21010	Incision of jaw joint
21025	Excision of bone, lower jaw
21026	Excision of facial bone(s)
21034	Removal of face bone lesion
21040	Removal of jaw bone lesion
21041	Removal of jaw bone lesion
21044	Removal of jaw bone lesion
21050	Removal of jaw joint
21060	Remove jaw joint cartilage
21070	Remove coronoid process
21100	Maxillofacial fixation
21206	Reconstruct upper jaw bone
21208	Augmentation of facial bones
21209	Reduction of facial bones
21210	Face bone graft
21215	Lower jaw bone graft
21230	Rib cartilage graft
21235	Ear cartilage graft
21240	Reconstruction of jaw joint
21242	Reconstruction of jaw joint
21243	Reconstruction of jaw joint
21244	Reconstruction of lower jaw
21245	Reconstruction of jaw
21246	Reconstruction of jaw
21248	Reconstruction of jaw
21249	Reconstruction of jaw
21267	Revise eye sockets
21270	Augmentation cheek bones
21275	Revision orbitofacial bones
21280	Revision of eyelid
21282	Revision of eyelid
21300	Treatment of skull fracture
21310	Treatment of nose fracture
21315	Treatment of nose fracture
21320	Treatment of nose fracture
21325	Repair of nose fracture
21330	Repair of nose fracture
21335	Repair of nose fracture
21337	Repair nasal septal fracture
21338	Repair nasoethmoid fracture
21339	Repair nasoethmoid fracture
21340	Repair of nose fracture
21343	Repair of sinus fracture
21355	Repair cheek bone fracture
21360	Repair cheek bone fracture
21365	Repair cheek bone fracture
21385	Repair eye socket fracture
21386	Repair eye socket fracture
21387	Repair eye socket fracture
21390	Repair eye socket fracture
21395	Repair eye socket fracture
21400	Treat eye socket fracture
21401	Repair eye socket fracture
21406	Repair eye socket fracture
21407	Repair eye socket fracture
21421	Treat mouth roof fracture
21422	Repair mouth roof fracture
21440	Repair dental ridge fracture
21445	Repair dental ridge fracture
21450	Treat lower jaw fracture
21451	Treat lower jaw fracture
21452	Treat lower jaw fracture
21453	Treat lower jaw fracture
21454	Treat lower jaw fracture
21455	Repair lower jaw fracture
21461	Repair lower jaw fracture
21462	Repair lower jaw fracture
21465	Repair lower jaw fracture
21470	Repair lower jaw fracture
21480	Reset dislocated jaw
21485	Reset dislocated jaw
21490	Repair dislocated jaw
21493	Treat hyoid bone fracture
21494	Repair hyoid bone fracture
21495	Repair hyoid bone fracture
21497	Interdental wiring
21501	Drain neck/chest lesion
21502	Drain chest lesion
21510	Drainage of bone lesion
21550	Biopsy of neck/chest
21555	Remove lesion neck/chest
21556	Remove lesion neck/chest
21600	Partial removal of rib
21610	Partial removal of rib
21620	Partial removal of sternum
21700	Revision of neck muscle
21720	Revision of neck muscle
21725	Revision of neck muscle
21800	Treatment of rib fracture
21805	Treatment of rib fracture
21810	Treatment of rib fracture(s)
21820	Treat sternum fracture
21920	Biopsy soft tissue of back
21925	Biopsy soft tissue of back
21930	Remove lesion, back or flank
21935	Remove tumor of back
22100	Remove part of neck vertebra
22101	Remove part, thorax vertebra
22102	Remove part, lumbar vertebra
22305	Treat spine process fracture
22310	Treat spine fracture
22315	Treat spine fracture
22325	Repair of spine fracture
22326	Repair neck spine fracture
22327	Repair thorax spine fracture
22505	Manipulation of spine
22900	Remove abdominal wall lesion
23000	Removal of calcium deposits
23020	Release shoulder joint
23030	Drain shoulder lesion
23035	Drain shoulder bone lesion
23040	Exploratory shoulder surgery
23044	Exploratory shoulder surgery
23065	Biopsy shoulder tissues
23066	Biopsy shoulder tissues
23075	Removal of shoulder lesion
23076	Removal of shoulder lesion
23077	Remove tumor of shoulder
23100	Biopsy of shoulder joint
23101	Shoulder joint surgery
23105	Remove shoulder joint lining
23106	Incision of collarbone joint
23107	Explore, treat shoulder joint
23120	Partial removal, collarbone
23125	Removal of collarbone
23130	Partial removal, shoulderbone
23140	Removal of bone lesion
23145	Removal of bone lesion
23146	Removal of bone lesion
23150	Removal of humerus lesion
23155	Removal of humerus lesion
23156	Removal of humerus lesion
23170	Remove collarbone lesion
23172	Remove shoulder blade lesion
23174	Remove humerus lesion
23180	Remove collarbone lesion
23182	Remove shoulderblade lesion
23184	Remove humerus lesion
23190	Partial removal of scapula
23195	Removal of head of humerus
23330	Remove shoulder foreign body
23331	Remove shoulder foreign body
23395	Muscle transfer, shoulder/arm
23397	Muscle transfers
23400	Fixation of shoulderblade
23405	Incision of tendon & muscle
23406	Incise tendon(s) & muscle(s)
23410	Repair of tendon(s)
23412	Repair of tendon(s)
23415	Release of shoulder ligament
23420	Repair of shoulder
23430	Repair biceps tendon rupture
23440	Removal/transplant tendon
23450	Repair shoulder capsule
23455	Repair shoulder capsule
23460	Repair shoulder capsule
23462	Repair shoulder capsule
23465	Repair shoulder capsule
23466	Repair shoulder capsule
23480	Revision of collabrone
23485	Revision of collabrone
23490	Reinforce clavicle
23491	Reinforce shoulder bones
23500	Treat clavicle fracture
23505	Treat clavicle fracture
23510	Repair clavicle fracture
23515	Repair clavicle fracture
23520	Treat clavicle dislocation
23525	Treat clavicle dislocation
23530	Repair clavicle dislocation
23532	Repair clavicle dislocation
23540	Treat clavicle dislocation
23545	Treat clavicle dislocation
23550	Repair clavicle dislocation
23552	Repair clavicle dislocation
23570	Treat shoulderblade fracture
23575	Treat shoulderblade fracture
23580	Repair scapula fracture
23585	Repair scapula fracture
23600	Treat humerus fracture
23605	Treat humerus fracture
23610	Repair humerus fracture
23615	Repair humerus fracture
23620	Treat humerus fracture
23625	Treat humerus fracture
23630	Repair humerus fracture
23650	Treat shoulder dislocation
23655	Treat shoulder dislocation
23658	Repair shoulder dislocation
23660	Repair shoulder dislocation
23665	Treat dislocation/fracture
23670	Repair dislocation/fracture
23675	Treat dislocation/fracture
23680	Repair dislocation/fracture
23700	Fixation of shoulder
23800	Fusion of shoulder joint
23802	Fusion of shoulder joint
23921	Amputation follow-up surgery
23930	Drainage of arm lesion
23931	Drainage of arm bursa
23935	Drain arm/elbow bone lesion
24000	Exploratory elbow surgery
24065	Biopsy arm/elbow soft tissue
24066	Biopsy arm/elbow soft tissue
24075	Remove arm/elbow lesion
24076	Remove arm/elbow lesion
24077	Remove tumor of arm/elbow
24100	Biopsy elbow joint lining
24101	Explore/treat elbow joint
24102	Remove elbow joint lining
24105	Removal of elbow bursa
24110	Remove humerus lesion
24115	Remove/graft bone lesion
24116	Remove/graft bone lesion
24120	Remove elbow lesion
24125	Remove/graft bone lesion
24126	Remove/graft bone lesion
24130	Removal of head of radius
24134	Removal of arm bone lesion
24136	Remove radius bone lesion
24138	Remove elbow bone lesion
24140	Partial removal of arm bone
24145	Partial removal of radius
24147	Partial removal of elbow
24150	Extensive humerus surgery
24151	Extensive humerus surgery
24152	Extensive radius surgery

24153 Extensive radius surgery
24155 Removal of elbow joint
24160 Remove elbow joint implant
24164 Remove radius head implant
24201 Removal of arm foreign body
24301 Muscle/tendon transfer
24310 Revision of arm tendon
24320 Repair of arm tendon
24330 Revision of arm muscles
24331 Revision of arm muscles
24340 Repair of ruptured tendon
24342 Repair of ruptured tendon
24350 Repair of tennis elbow
24351 Repair of tennis elbow
24352 Repair of tennis elbow
24354 Repair of tennis elbow
24356 Revision of tennis elbow
24360 Reconstruct elbow joint
24361 Reconstruct elbow joint
24362 Reconstruct elbow joint
24363 Replace elbow joint
24365 Reconstruct head of radius
24366 Reconstruct head of radius
24500 Revision of humerus
24410 Revision of humerus
24420 Revision of humerus
24430 Repair of humerus
24435 Repair humerus with graft
24470 Revision of elbow joint
24495 Decompression of forearm
24498 Reinforce humerus
24500 Treat humerus fracture
24505 Treat humerus fracture
24506 Treat humerus fracture
24510 Repair humerus fracture
24515 Repair humerus fracture
24516 Repair humerus fracture
24530 Treat humerus fracture
24531 Treat humerus fracture
24535 Treat humerus fracture
24536 Treat humerus fracture
24538 Treat humerus fracture
24540 Treat humerus fracture
24542 Treat humerus fracture
24545 Repair humerus fracture
24560 Treat humerus fracture
24565 Treat humerus fracture
24570 Repair humerus fracture
24575 Repair humerus fracture
24576 Treat humerus fracture
24577 Treat humerus fracture
24578 Repair humerus fracture
24579 Repair humerus fracture
24580 Treat elbow fracture
24581 Treat elbow fracture
24583 Repair elbow fracture
24585 Repair elbow fracture
24586 Repair elbow fracture
24587 Repair elbow fracture
24588 Repair elbow fracture
24600 Treat elbow dislocation
24605 Treat elbow dislocation
24610 Repair elbow dislocation
24615 Repair elbow dislocation
24620 Treat elbow fracture
24625 Repair elbow fracture
24635 Repair elbow fracture
24655 Treat radius fracture
24660 Repair radius fracture
24665 Repair radius fracture
24666 Repair radius fracture
24670 Treatment of ulna fracture
24675 Treatment of ulna fracture
24680 Repair ulna fracture
24685 Repair ulna fracture
24800 Fusion of elbow joint
24802 Fusion/graft of elbow joint
24925 Amputation follow-up surgery
25000 Incision of tendon sheath
25005 Incision of tendon sheath
25020 Decompression of forearm
25023 Decompression of forearm
25028 Drainage of forearm lesion
25031 Drainage of forearm bursa
25035 Treat forearm bone lesion
25040 Explore/treat wrist joint
25065 Biopsy forearm soft tissues
25066 Biopsy forearm soft tissues
25075 Removal of forearm lesion
25076 Removal of forearm lesion
25077 Remove tumor, forearm/wrist
25085 Incision of wrist capsule
25100 Biopsy of wrist joint
25101 Explore/treat wrist joint
25105 Remove wrist joint lining
25107 Remove wrist joint cartilage
25110 Remove wrist tendon lesion
25111 Remove wrist tendon lesion
25112 Remove wrist tendon lesion
25115 Remove wrist/forearm lesion
25116 Remove wrist/forearm lesion
25118 Excise wrist tendon sheath
25119 Partial removal of ulna
25120 Removal of forearm lesion
25125 Remove/graft forearm lesion
25126 Remove/graft forearm lesion
25130 Removal of wrist lesion
25135 Remove & graft wrist lesion
25136 Remove & graft wrist lesion
25145 Remove forearm bone lesion
25150 Partial removal of ulna
25151 Partial removal of radius
25170 Extensive forearm surgery
25210 Removal of wrist bone
25215 Removal of wrist bones
25230 Partial removal of radius
25240 Partial removal of ulna
25248 Remove forearm foreign body
25250 Removal of wrist prosthesis
25251 Removal of wrist prosthesis
25260 Repair forearm tendon/muscle
25263 Repair forearm tendon/muscle
25265 Repair forearm tendon/muscle
25270 Repair forearm tendon/muscle
25272 Repair forearm tendon/muscle
25274 Repair forearm tendon/muscle
25280 Revise wrist/forearm tendon
25290 Incise wrist/forearm tendon
25295 Release wrist/forearm tendon
25300 Fusion of tendons at wrist
25301 Fusion of tendons at wrist
25310 Transplant forearm tendon
25312 Transplant forearm tendon
25315 Revise palsy hand tendon(s)
25316 Revise palsy hand tendon(s)
25317 Revise hand contracture
25318 Revise hand contracture
25320 Repair/revise wrist joint
25330 Revise wrist joint
25331 Revise wrist joint
25332 Revise wrist joint
25335 Realignment of hand
25350 Revision of radius
25355 Revision of radius
25360 Revision of ulna
25365 Revise radius & ulna
25370 Revise radius or ulna
25375 Revise radius & ulna
25390 Shorten radius/ulna
25391 Lengthen radius/ulna
25392 Shorten radius & ulna
25393 Lengthen radius & ulna
25400 Repair radius or ulna
25405 Repair/graft radius or ulna
25415 Repair radius & ulna
25420 Repair/graft radius & ulna
25425 Repair/graft radius or ulna
25426 Repair/graft radius & ulna
25440 Repair/graft wrist bone
25441 Reconstruct wrist joint
25442 Reconstruct wrist joint
25443 Reconstruct wrist joint
25444 Reconstruct wrist joint
25445 Reconstruct wrist joint
25446 Wrist replacement
25447 Repair wrist joint(s)
25449 Remove wrist joint implant
25450 Revision of wrist joint
25455 Revision of wrist joint
25490 Reinforce radius
25491 Reinforce ulna
25492 Reinforce radius and ulna
25505 Treat fracture of radius
25510 Repair fracture of radius
25515 Repair fracture of radius
25535 Treat fracture of ulna
25540 Repair fracture of ulna
25545 Repair fracture of ulna
25565 Treat fracture radius & ulna
25570 Repair fracture radius/ulna
25575 Repair fracture radius/ulna
25605 Treat fracture radius/ulna
25610 Repair fracture radius/ulna
25611 Repair fracture radius/ulna
25615 Repair fracture radius/ulna
25620 Repair fracture radius/ulna
25624 Treat wrist bone fracture
25626 Repair wrist bone fracture
25628 Repair wrist bone fracture
25635 Treat wrist bone fracture
25640 Repair wrist bone fracture
25645 Repair wrist bone fracture
25660 Treat wrist dislocation
25665 Repair wrist dislocation
25670 Repair wrist dislocation
25675 Treat wrist dislocation
25676 Repair wrist dislocation
25680 Treat wrist fracture
25685 Repair wrist fracture
25690 Treat wrist dislocation
25695 Repair wrist dislocation
25800 Fusion of wrist joint
25805 Fusion/graft of wrist joint
25810 Fusion/graft of wrist joint
25820 Fusion of hand bones
25825 Fusion hand bones with graft
25907 Amputation follow-up surgery
25922 Amputate hand at wrist
25929 Amputation follow-up surgery
26011 Drainage of finger abscess
26020 Drain hand tendon sheath
26025 Drainage of palm bursa
26030 Drainage of palm bursa(s)
26034 Treat hand bone lesion
26035 Decompress fingers/hand
26037 Decompress fingers/hand
26040 Release palm contracture
26045 Release palm contracture
26055 Incise finger tendon sheath
26060 Incision of finger tendon
26070 Explore/treat hand joint
26075 Explore/treat finger joint
26080 Explore/treat finger joint
26100 Biopsy hand joint lining
26105 Biopsy finger joint lining
26110 Biopsy finger joint lining
26115 Removal of hand lesion
26116 Removal of hand lesion

26117 Removal tumor, hand/finger
26121 Release palm contracture
26123 Release palm contracture
26125 Release palm contracture
26130 Remove wrist joint lining
26135 Revise finger joint, each
26140 Revise finger joint, each
26145 Tendon excision, palm/finger
26160 Removal tendon sheath lesion
26170 Removal of palm tendon, each
26180 Removal of finger tendon
26200 Remove hand bone lesion
26205 Remove/graft bone lesion
26210 Removal of finger lesion
26215 Removal/graft finger lesion
26230 Partial removal of hand bone
26235 Partial removal, finger bone
26236 Partial removal, finger bone
26250 Extensive hand surgery
26255 Extensive hand surgery
26260 Extensive finger surgery
26261 Extensive finger surgery
26262 Partial removal of finger
26320 Removal of implant from hand
26350 Repair finger/hand tendon
26352 Repair/graft hand tendon
26356 Repair finger/hand tendon
26357 Repair finger/hand tendon
26358 Repair/graft hand tendon
26370 Repair finger/hand tendon
26372 Repair/graft hand tendon
26373 Repair finger/hand tendon
26390 Revise hand/finger tendon
26392 Repair/graft hand tendon
26410 Repair hand tendon
26412 Repair/graft hand tendon
26415 Excision, hand/finger tendon
26418 Repair finger tendon
26420 Repair/graft finger tendon
26426 Repair finger/hand tendon
26428 Repair/graft finger tendon
26432 Repair finger tendon
26433 Repair finger tendon
26434 Repair/graft finger tendon
26437 Realignment of tendons
26440 Release palm/finger tendon
26442 Release palm & finger tendon
26445 Release hand/finger tendon
26449 Release forearm/hand tendon
26450 Incision of palm tendon
26455 Incision of finger tendon
26460 Incise hand/finger tendon
26471 Fusion of finger tendons
26474 Fusion of finger tendons
26476 Tendon lengthening
26477 Tendon shortening
26478 Lengthening of hand tendon
26479 Shortening of hand tendon
26480 Transplant hand tendon
26483 Transplant/graft hand tendon
26485 Transplant palm tendon
26489 Transplant/graft palm tendon
26490 Revise thumb tendon
26492 Tendon transfer with graft
26494 Hand tendon/muscle transfer
26496 Revise thumb tendon
26497 Finger tendon transfer
26498 Finger tendon transfer
26499 Revision of finger
26500 Hand tendon reconstruction
26502 Hand tendon reconstruction
26504 Hand tendon reconstruction
26508 Release thumb contracture
26510 Thumb tendon transfer
26516 Fusion of knuckle joint
26517 Fusion of knuckle joints
26518 Fusion of knuckle joints
26520 Release knuckle contracture
26525 Release finger contracture
26527 Revise wrist joint
26530 Revise knuckle joint
26531 Revise knuckle with implant
26535 Revise finger joint
26536 Revise/implant finger joint
26540 Repair hand joint
26541 Repair hand joint with graft
26542 Repair hand joint with graft
26545 Reconstruct finger joint
26548 Reconstruct finger joint
26550 Construct thumb replacement
26552 Construct thumb replacement
26555 Positional change of finger
26557 Construct finger replacement
26558 Added finger surgery
26559 Added finger surgery
26560 Repair of web finger
26561 Repair of web finger
26562 Repair of web finger
26565 Correct metacarpal flaw
26567 Correct finger deformity
26568 Lengthen metacarpal/finger
26580 Repair hand deformity
26585 Repair finger deformity
26590 Repair finger deformity
26591 Repair muscles of hand
26593 Release muscles of hand
26596 Excision constricting tissue
26597 Release of scar contracture
26605 Treat metacarpal fracture
26607 Treat metacarpal fracture
26610 Repair metacarpal fracture
26615 Repair metacarpal fracture
26645 Treat thumb fracture
26650 Repair thumb fracture
26655 Repair thumb fracture
26660 Repair thumb fracture
26665 Repair thumb fracture
26675 Treat hand dislocation
26676 Pin hand dislocation
26680 Repair hand dislocation
26685 Repair hand dislocation
26686 Repair hand dislocation
26705 Treat knuckle dislocation
26706 Pin knuckle dislocation
26710 Repair knuckle dislocation
26715 Repair knuckle dislocation
26727 Treat finger fracture, each
26730 Repair finger fracture, each
26735 Repair finger fracture, each
26742 Treat finger fracture, each
26744 Repair finger fracture, each
26746 Repair finger fracture, each
26756 Pin finger fracture, each
26765 Repair finger fracture, each
26776 Pin finger dislocation
26780 Repair finger dislocation
26785 Repair finger dislocation
26820 Thumb fusion with graft
26841 Fusion of thumb
26842 Thumb fusion with graft
26843 Fusion of hand joint
26844 Fusion/graft of hand joint
26850 Fusion of knuckle
26852 Fusion of knuckle with graft
26860 Fusion of finger joint
26861 Fusion of finger joint, added
26862 Fusion/graft of finger joint
26863 Fuse/graft added joint
26910 Amputate metacarpal bone
26951 Amputation of finger/thumb
26952 Amputation of finger/thumb
26990 Drainage of pelvis lesion
26991 Drainage of pelvis bursa
26992 Drainage of bone lesion
27000 Incision of hip tendon
27001 Incision of hip tendon
27003 Incision of hip tendon
27030 Drainage of hip joint
27033 Exploration of hip joint
27035 Denervation of hip joint
27040 Biopsy of soft tissues
27041 Biopsy of soft tissues
27047 Remove hip/pelvis lesion
27048 Remove hip/pelvis lesion
27049 Remove tumor, hip/pelvis
27050 Biopsy of sacroiliac joint
27052 Biopsy of hip joint
27060 Removal of ischial bursa
27062 Remove femur lesion/bursa
27065 Removal of hip bone lesion
27066 Removal of hip bone lesion
27080 Removal of tail bone
27086 Remove hip foreign body
27087 Remove hip foreign body
27097 Revision of hip tendon
27098 Transfer tendon to pelvis
27100 Transfer of abdominal muscle
27105 Transfer of spinal muscle
27110 Transfer of iliopsoas muscle
27111 Transfer of iliopsoas muscle
27190 Treatment of sacrum fracture
27192 Repair of sacrum fracture
27193 Treat pelvic ring fracture
27194 Treat pelvic ring fracture
27195 Treat pelvis dislocation
27196 Treat pelvis dislocation
27201 Repair tail bone fracture
27202 Repair tail bone fracture
27210 Treat pelvis fracture
27215 Pelvic fracture(s) treatment
27216 Treat pelvic ring fracture
27230 Treat fracture of thigh
27238 Treatment of thigh fracture
27246 Treatment of thigh fracture
27250 Treat hip dislocation
27252 Treat hip dislocation
27265 Treatment of hip dislocation
27266 Treatment of hip dislocation
27275 Manipulation of hip joint
27301 Drain thigh/knee lesion
27303 Drainage of bone lesion
27305 Incise Thigh tendon & fascia
27306 Incision of thigh tendon
27307 Incision of thigh tendons
27310 Exploration of knee joint
27315 Partial removal, thigh nerve
27320 Partial removal, thigh nerve
27323 Biopsy thigh soft tissues
27324 Biopsy thigh soft tissues
27327 Removal of thigh lesion
27328 Removal of thigh lesion
27330 Biopsy knee joint lining
27331 Explore/treat knee joint
27332 Removal of knee cartilage
27333 Removal of knee cartilage
27334 Remove knee joint lining
27335 Remove knee joint lining
27340 Removal of kneecap bursa
27345 Removal of knee cyst
27350 Removal of kneecap
27355 Remove femur lesion
27356 Remove femur lesion/graft
27360 Partial removal leg bone(s)
27372 Removal of foreign body
27380 Repair of kneecap tendon
27381 Repair/graft kneecap tendon
27385 Repair of thigh muscle
27386 Repair/graft of thigh muscle

27390	Incision of thigh tendon
27391	Incision of thigh tendons
27392	Incision of thigh tendons
27393	Lengthening of thigh tendon
27394	Lengthening of thigh tendons
27395	Lengthening of thigh tendons
27396	Transplant of thigh tendon
27397	Transplants of thigh tendons
27400	Revise thigh muscles/tendons
27403	Repair of knee cartilgage
27405	Repair of knee ligament
27407	Repair of knee ligament
27409	Repair of knee ligaments
27418	Repair degenerated kneecap
27420	Revision of unstable kneecap
27422	Revision of unstable kneecap
27424	Revision/removal of kneecap
27425	Lateral retinacular release
27427	Reconstruction, knee
27428	Reconstruction, knee
27429	Reconstruction, knee
27430	Revision of thigh muscles
27435	Incision of knee joint
27437	Revise kneecap
27438	Revise kneecap with implant
27440	Revision of knee joint
27441	Revision of knee joint
27442	Revision of knee joint
27443	Revision of knee joint
27500	Treatment of thigh fracture
27502	Treatment of thigh fracture
27504	Repair of thigh fracture
27508	Treatment of thigh fracture
27510	Treatment of thigh fracture
27512	Repair of thigh fracture
27516	Repair of thigh growth plate
27517	Repair of thigh growth plate
27520	Treat kneecap fracture
27522	Repair of kneecap fracture
27524	Repair of kneecap fracture
27530	Treatment of knee fracture
27532	Treatment of knee fracture
27534	Repair of knee fracture
27538	Treat knee fracture(s)
27550	Treat knee dislocation
27552	Treat knee dislocation
27560	Treat kneecap dislocation
27562	Treat kneecap dislocation
27564	Repair kneecap dislocation
27566	Repair kneecap dislocation
27570	Fixation of knee joint
27603	Drain lower leg lesion
27604	Drain lower leg bursa
27605	Incision of achilles tendon
27606	Incision of achilles tendon
27607	Treat lower leg bone lesion
27610	Explore/treat ankle joint
27612	Exploration of ankle joint
27613	Biopsy lower leg soft tissue
27614	Biopsy lower leg soft tissue
27615	Remove tumor, lower leg
27618	Remove lower leg lesion
27619	Remove lower leg lesion
27620	Explore, treat ankle joint
27625	Remove ankle joint lining
27626	Remove ankle joint lining
27630	Removal of tendon lesion
27635	Remove lower leg bone lesion
27637	Remove/graft leg bone lesion
27638	Remove/graft leg bone lesion
27640	Partial removal of tibia
27641	Partial removal of fibula
27650	Repair achilles tendon
27652	Repair/graft achilles tendon
27654	Repair of achilles tendon
27656	Repair leg fascia defect
27658	Repair of leg tendon, each
27659	Repair of leg tendon, each
27664	Repair of leg tendon, each
27665	Repair of leg tendon, each
27675	Repair lower leg tendons
27676	Repair lower leg tendons
27680	Release of lower leg tendon
27681	Release of lower leg tendons
27685	Revision of lower leg tendon
27686	Revise lower leg tendons
27687	Revision of calf tendon
27690	Revise lower leg tendon
27691	Revise lower leg tendon
27692	Revise additional leg tendon
27695	Repair of ankle ligament
27696	Repair of ankle ligaments
27698	Repair of ankle ligament
27700	Revision of ankle joint
27704	Removal of ankle implant
27705	Incision of tibia
27707	Incision of fibula
27709	Incision of tibia & fibula
27715	Revision of lower leg
27730	Repair of tibia epiphysis
27732	Repair of fibula epiphysis
27734	Repair lower leg epiphyses
27740	Repair of leg epiphyses
27742	Repair of leg epiphyses
27745	Reinforce tibia
27750	Treatment of tibia fracture
27752	Treatment of tibia fracture
27754	Repair of tibia fracture
27756	Repair of tibia fracture
27758	Repair of tibia fracture
27760	Treatment of ankle fracture
27762	Treatment of ankle fracture
27764	Repair of ankle fracture
27766	Repair of ankle fracture
27780	Treatment of fibula fracture
27781	Treatment of fibula fracture
27782	Repair of fibula fracture
27784	Repair of fibula fracture
27786	Treatment of ankle fracture
27788	Treatment of ankle fracture
27790	Repair of ankle fracture
27792	Repair of ankle fracture
27800	Treat lower leg fractures
27802	Treat lower leg fractures
27804	Repair lower leg fractures
27808	Treatment of ankle fracture
27810	Treatment of ankle fracture
27812	Repair of ankle fracture
27814	Repair of ankle fracture
27816	Treatment of ankle fracture
27818	Treatment of ankle fracture
27820	Repair of ankle fracture
27822	Repair of ankle fracture
27823	Repair of ankle fracture
27830	Treat lower leg dislocation
27831	Treat lower leg dislocation
27832	Repair lower leg dislocation
27840	Treat ankle dislocation
27842	Treat ankle dislocation
27844	Repair ankle dislocation
27846	Repair ankle dislocation
27848	Repair ankle dislocation
27860	Fixation of ankle joint
27870	Fusion of ankle joint
27871	Fusion of tibiofibular joint
27884	Amputation follow-up surgery
28002	Treatment of foot infection
28003	Treatment of foot infection
28005	Treat foot bone lesion
28008	Incision of foot fascia
28020	Exploration of a foot joint
28030	Removal of foot nerve
28035	Decompression of tibia nerve
28043	Excision of foot lesion
28045	Excision of foot lesion
28046	Resection of tumor, foot
28050	Biopsy of foot joint lining
28054	Biopsy of toe joint lining
28060	Partial removal foot fascia
28062	Removal of foot fascia
28070	Removal of foot joint lining
28072	Removal of foot joint lining
28080	Removal of foot lesion
28086	Excise foot tendon sheath
28088	Excise foot tendon sheath
28090	Removal of foot lesion
28092	Removal of toe lesions
28100	Removal of ankle/heel lesion
28102	Remove/graft foot lesion
28103	Remove/graft foot lesion
28104	Removal of foot lesion
28106	Remove/graft foot lesion
28107	Remove/graft foot lesion
28110	Part removal of metatarsal
28111	Part removal of metatarsal
28112	Part removal of metatarsal
28113	Part removal of metatarsal
28114	Removal of metatarsal heads
28116	Revision of foot
28118	Removal of heel bone
28119	Removal of heel spur
28120	Part removal of ankle/heel
28122	Partial removal of foot bone
28130	Removal of ankle bone
28140	Removal of metatarsal
28150	Removal of toe
28171	Extensive foot surgery
28173	Extensive foot surgery
28175	Extensive foot surgery
28192	Removal of foot foreign body
28193	Removal of foot foreign body
28200	Repair of foot tendon
28202	Repair/graft of foot tendon
28208	Repair of foot tendon
28210	Repair/graft of foot tendon
28222	Release of foot tendons
28225	Release of foot tendon
28226	Release of foot tendons
28236	Transfer of foot tendon
28238	Revision of foot tendon
28240	Release of big toe
28250	Revision of foot fascia
28260	Release of midfoot joint
28261	Revision of foot tendon
28262	Revision of foot and ankle
28264	Release of midfoot joint
28280	Fusion of toes
28285	Repair of hammertoe
28286	Repair of hammertoe
28288	Partial removal of foot bone
28290	Correction of bunion
28292	Correction of bunion
28293	Correction of bunion
28294	Correction of bunion
28296	Correction of bunion
28297	Correction of bunion
28298	Correction of bunion
28299	Correction of bunion
28300	Incision of heel bone
28302	Incision of ankle bone
28304	Incision of midfoot bones
28305	Incise/graft midfoot bones
28306	Incision of metatarsal
28308	Incision of metatarsal
28309	Incision of metatarsals
28310	Revision of big toe
28312	Revision of toe
28313	Repair deformity of toe

28315	Removal of sesamoid bone
28320	Repair of foot bones
28322	Repair of metatarsals
28400	Treatment of heel fracture
28405	Treatment of heel fracture
28406	Treatment of heel fracture
28410	Repair of heel fracture
28415	Repair of heel fracture
28420	Repair/graft heel fracture
28435	Treatment of ankle fracture
28436	Treatment of ankle fracture
28440	Repair of ankle fracture
28445	Repair of ankle fracture
28460	Repair midfoot fracture, each
28465	Repair midfoot fracture, each
28476	Repair metatarsal fracture
28480	repair metatarsal fracture
28485	Repair metatarsal fracture
28496	Repair big toe fracture
28500	Repair big toe fracture
28505	Repair big toe fracture
28520	Repair of toe fracture
28525	Repair of toe fracture
28545	Treat foot dislocation
28546	Treat foot dislocation
28555	Repair foot dislocation
28575	Treat foot dislocation
28585	Repair foot dislocation
28605	Treat foot dislocation
28606	Treat foot dislocation
28615	Repair foot dislocation
28635	Treat toe dislocation
28640	Repair toe dislocation
28645	Repair toe dislocation
28665	Treat toe dislocation
28670	Repair of toe dislocation
28675	Repair of toe dislocation
28705	Fusion of foot bones
28715	Fusion of foot bones
28725	Fusion of foot bones
28730	Fusion of foot bones
28735	Fusion of foot bones
28737	Revision of foot bones
28740	Fusion of foot bones
28750	Fusion of big toe joint
28755	Fusion of big toe joint
28760	Fusion of big toe joint
28810	Amputation of toe & metatarsal
28820	Amputation of toe
28825	Partial amputation of toe
29815	Shoulder arthroscopy
29819	Shoulder arthroscopy/surgery
29820	Shoulder arthroscopy/surgery
29821	Shoulder arthroscopy/surgery
29822	Shoulder arthroscopy/surgery
29823	Shoulder arthroscopy/surgery
29825	Shoulder arthroscopy/surgery
29826	Shoulder arthroscopy/surgery
29830	Elbow arthroscopy
29834	Elbow arthroscopy/surgery
29835	Elbow arthroscopy/surgery
29836	Elbow arthroscopy/surgery
29837	Elbow arthroscopy/surgery
29838	Elbow arthroscopy/surgery
29840	Wrist arthroscopy
29843	Wrist arthroscopy/surgery
29844	Wrist arthroscopy/surgery
29845	Wrist arthroscopy/surgery
29846	Wrist arthroscopy/surgery
29847	Wrist arthroscopy/surgery
29870	Knee arthroscopy, diagnostic
29871	Knee arthroscopy/drainage
29874	Knee arthroscopy/surgery
29875	Knee arthroscopy/surgery
29876	Knee arthroscopy/surgery
29877	Knee arthroscopy/surgery
29879	Knee arthroscopy/surgery
29880	Knee arthroscopy/surgery
29881	Knee arthroscopy/surgery
29882	Knee arthroscopy/surgery
29883	Knee arthroscopy/surgery
29884	Knee arthroscopy/surgery
29885	Knee arthroscopy/surgery
29886	Knee arthroscopy/surgery
29887	Knee arthroscopy/surgery
29888	Knee arthroscopy/surgery
29889	Knee arthroscopy/surgery
29894	Ankle arthroscopy/surgery
29895	Ankle arthroscopy/surgery
29897	Ankle arthroscopy/surgery
29898	Ankle arthroscopy/surgery
30115	Removal of nose polyp(s)
30117	Removal of intranasal lesion
30118	Removal of intranasal lesion
30120	Revision of nose
30124	Removal of nose lesion
30125	Removal of nose lesion
30130	Removal of turbinate bones
30140	Removal of turbinate bones
30150	Partial removal of nose
30160	Removal of nose
30310	Remove nasal foreign body
30320	Remove nasal foreign body
30400	Reconstruction of nose
30410	Reconstruction of nose
30420	Reconstruction of nose
30430	Revision of nose
30435	Revision of nose
30450	Revision of nose
30520	Repair of nasal septum
30540	Repair nasal defect
30560	Release of nasal adhesions
30580	Repair upper jaw fistula
30600	Repair mouth/nose fistula
30620	Reconstruction inner nose
30630	Repair nasal septum defect
30801	Cauterization inner nose
30802	Cauterization inner nose
30903	Control of nosebleed
30905	Control of nosebleed
30906	Repeat control of nosebleed
30915	Ligation nasal sinus artery
30920	Ligation upper jaw artery
31020	Exploration maxillary sinus
31030	Exploration maxillary sinus
31032	Explore sinus, remove polyps
31050	Exploration sphenoid sinus
31051	Sphenoid sinus surgery
31070	Exploration of frontal sinus
31075	Exploration of frontal sinus
31080	Removal of frontal sinus
31086	Removal of frontal sinus
31090	Exploration of sinuses
31200	Removal of ethmoid sinus
31201	Removal of ethmoid sinus
31205	Removal of ethmoid sinus
31252	Nasal endoscopy, polypectomy
31254	Revision of ethmoid sinus
31255	Removal of ethmoid sinus
31256	Exploration maxillary sinus
31258	Nasal endoscopy, surgical
31260	Endoscopy, maxillary sinus
31263	Endoscopy, maxillary sinus
31265	Endoscopy, maxillary sinus
31267	Endoscopy, maxillary sinus
31268	Endoscopy, maxillary sinus
31270	Endoscopy, sphenoid sinus
31275	Sphenoid endoscopy, surgical
31277	Sphenoid endoscopy, surgical
31300	Removal of larynx lesion
31320	Diagnostic incision larynx
31510	Laryngoscopy with biopsy
31511	Remove foreign body, larynx
31512	Removal of larynx lesion
31513	Injection into vocal cord
31515	Laryngoscopy for aspiration
31525	Diagnostic laryngoscopy
31526	Diagnostic laryngoscopy
31527	Laryngoscopy for treatment
31528	Laryngoscopy and dilatation
31529	Laryngoscopy and dilatation
31530	Operative laryngoscopy
31531	Operative laryngoscopy
31535	Operative laryngoscopy
31536	Operative laryngoscopy
31540	Operative laryngoscopy
31541	Operative laryngoscopy
31560	Operative laryngoscopy
31561	Operative laryngoscopy
31570	Laryngoscopy with injection
31571	Laryngoscopy with injection
31576	Laryngoscopy with biopsy
31577	Remove foreign body, larynx
31578	Removal of larynx lesion
31580	Revision of larynx
31582	Revision of larynx
31584	Repair of larynx fracture
31585	Repair of larynx fracture
31586	Repair of larynx fracture
31588	Revision of larynx
31590	Reinnervate larynx
31595	Larynx nerve surgery
31600	Incision of windpipe
31611	Surgery/speech prosthesis
31612	Puncture/clear windpipe
31613	Repair windpipe opening
31614	Repair windpipe opening
31615	Visualization of windpipe
31622	Diagnostic bronchoscopy
31625	Bronchoscopy with biopsy
31628	Bronchoscopy with biopsy
31629	Bronchoscopy with biopsy
31630	Bronchoscopy with repair
31631	Bronchoscopy with dilation
31635	Remove foreign body, airway
31640	Bronchoscopy & remove lesion
31641	Bronchoscopy, treat blockage
31645	Bronchoscopy, clear airways
31646	Bronchoscopy, reclear airways
31656	Bronchoscopy, inject for X-ray
31659	Bronchoscopic procedures
31700	Insertion of airway catheter
31710	Insertion of airway catheter
31715	Injection for bronchus X-ray
31717	Bronchial brush biopsy
31719	Insert windpipe tube
31720	Clearance of airways
31730	Intro windpipe wire/tube
31750	Repair of windpipe
31755	Repair of windpipe
31785	Remove windpipe lesion
31800	Repair of windpipe injury
31820	Closure of windpipe lesion
31825	Repair of windpipe defect
31830	Revise windpipe scar
32000	Drainage of chest
32002	Treatment of collapsed lung
32005	Treat lung lining chemically
32020	Insertion of chest tube
32400	Needle biopsy chest lining
32405	Biopsy, lung or mediastinum
32420	Puncture/clear lung
33010	Drainage of heart sac
33011	Repeat drainage of heart sac
34101	Removal of artery clot
36261	Revision of infusion pump
36262	Removal of infusion pump
36488	Insertion of catheter, vein

36489	Insertion of catheter, vein
36490	Insertion of catheter, vein
36491	Insertion of catheter, vein
36522	Photopheresis
36530	Insertion of infusion pump
36531	Revision of infusion pump
36532	Removal of infusion pump
36533	Insertion of access port
36534	Revision of access port
36535	Removal of access port
36640	Insertion catheter, artery
36800	Insertion of cannula
36810	Insertion of cannula
36815	Insertion of cannula
36820	Insertion of cannula
36821	Artery-vein fusion
36825	Artery-vein graft
36830	Artery-vein graft
36832	Revise artery-vein fistula
36835	Artery to vein shunt
36840	Insert mandril
36845	Fusion with mandril
36860	Cannula declotting
36861	Cannula declotting
37609	Temporal artery procedure
37700	Revise leg vein
37720	Removal of leg vein
37730	Removal of leg veins
37735	Removal of leg veins/lesion
37760	Revision of leg veins
37780	Revision of leg vein
37785	Revise secondary varicosity
38300	Drainage lymph node lesion
38305	Drainage lymph node lesion
38308	Incision of lymph channels
38500	Biopsy/removal, lymph node(s)
38505	Needle biopsy, lymph node(s)
38510	Biopsy/removal, lymph node(s)
38520	Biopsy/removal, lymph node(s)
38525	Biopsy/removal, lymph node(s)
38530	Biopsy/removal, lymph node(s)
38542	Explore deep node(s), neck
38550	Removal neck/armpit lesion
38555	Removal neck/armpit lesion
38700	Removal of lymph nodes, neck
38740	Remove armpit lymph nodes
38745	Remove armpits lymph nodes
38760	Remove groin lymph nodes
38790	Injection for lymphatic xray
40500	Partial excision of lip
40510	Partial excision of lip
40520	Partial excision of lip
40525	Reconstruct lip with flap
40527	Reconstruct lip with flap
40530	Partial removal of lip
40650	Repair lip
40652	Repair lip
40654	Repair lip
40801	Drainage of mouth lesion
40805	Removal foreign body, mouth
40806	Incision of lip fold
40814	Excise/repair mouth lesion
40816	Excision of mouth lesion
40818	Excise oral mucosa for graft
40819	Excise lip or cheek fold
40820	Treatment of mouth lesion
40831	Repair mouth laceration
40840	Reconstruction of mouth
40842	Reconstruction of mouth
40843	Reconstruction of mouth
40844	Reconstruction of mouth
40845	Reconstruction of mouth
41000	Drainage of mouth lesion
41005	Drainage of mouth lesion
41006	Drainage of mouth lesion
41007	Drainage of mouth lesion
41008	Drainage of mouth lesion
41009	Drainage of mouth lesion
41010	Incision of tongue fold
41015	Drainage of mouth lesion
41016	Drainage of mouth lesion
41017	Drainage of mouth lesion
41018	Drainage of mouth lesion
41105	Biopsy of tongue
41110	Excision of tongue lesion
41112	Excision of tongue lesion
41113	Excision of tongue lesion
41114	Excision of tongue lesion
41115	Excision of tongue fold
41116	Excision of mouth lesion
41120	Partial removal of tongue
41250	Repair tongue laceration
41251	Repair tongue laceration
41252	Repair tongue laceration
41500	Fixation of tongue
41510	Tongue to lip surgery
41520	Reconstruction, tongue fold
41800	Drainage of gum lesion
41805	Removal foreign body, gum
41806	Removal foreign body, jawbone
41827	Excision of gum lesion
42000	Drainage mouth roof lesion
42104	Excision lesion, mouth roof
42106	Excision lesion, mouth roof
42107	Excision lesion, mouth roof
42120	Remove palate/lesion
42140	Excision of uvula
42145	Repair, palate, pharynx/uvula
42160	Treatment mouth roof lesion
42180	Repair palate
42182	Repair palate
42200	Reconstruct cleft palate
42205	Reconstruct cleft palate
42210	Reconstruct cleft palate
42215	Reconstruct cleft palate
42220	Reconstruct cleft palate
42225	Reconstruct cleft palate
42235	Repair palate
42260	Repair nose to lip fistula
42281	Insertion, palate prosthesis
42300	Drainage of salivary gland
42305	Drainage of salivary gland
42310	Drainage of salivary gland
42320	Drainage of salivary gland
42325	Create salivary cyst drain
42335	Removal of salivary stone
42340	Removal of salivary stone
42405	Biopsy of salivary gland
42408	Excision of salivary cyst
42409	Drainage of salivary cyst
42410	Excise parotid gland/lesion
42420	Excise parotid gland/lesion
42425	Excise parotid gland/lesion
42440	Excision submaxillary gland
42450	Excision sublingual gland
42500	Repair salivary duct
42505	Repair salivary duct
42507	Parotid duct diversion
42508	Parotid duct diversion
42509	Parotid duct diversion
42510	Parotid duct diversion
42600	Closure of salivary fistula
42700	Drainage of tonsil abscess
42720	Drainage of throat abscess
42725	Drainage of throat abscess
42802	Biopsy of throat
42804	Biopsy of upper nose/throat
42806	Biopsy of upper nose/throat
42808	Excise pharynx lesion
42810	Excision of neck cyst
42815	Excision of neck cyst
42820	Remove tonsils and adenoids
42821	Remove tonsils and adenoids
42825	Removal of tonsils
42826	Removal of tonsils
42830	Removal of adenoids
42831	Removal of adenoids
42835	Removal of adenoids
42836	Removal of adenoids
42860	Excision of tonsil tags
42870	Excision of lingual tonsil
42880	Excise nose/throat lesion
42900	Repair throat wound
42950	Reconstruction of throat
42955	Surgical opening of throat
42960	Control throat bleeding
42962	Control throat bleeding
43200	Esophagus endoscopy
43202	Esophagus endoscopy, biopsy
43204	Esophagus endoscopy & inject
43215	Esophagus endoscopy
43217	Esophagus endoscopy
43219	Esophagus endoscopy
43220	Esophagus endoscopy, dilation
43226	Esophagus endoscopy, dilation
43227	Esophagus endoscopy, repair
43228	Esophagus endoscopy, repair
43234	Upper GI endoscopy, exam
43235	Upper GI endoscopy, diagnosis
43239	Upper GI endoscopy, biopsy
43241	Upper GI endoscopy with tube
43243	Upper GI endoscopy and injection
43245	Operative upper GI endoscopy
43246	Place gastrostomy tube
43247	Operative upper GI endoscopy
43251	Operative upper GI endoscopy
43255	Operative upper GI endoscopy
43258	Operative upper GI endoscopy
43260	Endoscopy, bile duct/pancreas
43262	Endoscopy, bile duct/pancreas
43263	Endoscopy, bile duct/pancreas
43264	Endoscopy, bile duct/pancreas
43265	Endoscopy, bile duct/pancreas
43267	Endoscopy, bile duct/pancreas
43268	Endoscopy, bile duct/pancreas
43269	Endoscopy, bile duct/pancreas
43271	Endoscopy, bile duct/pancreas
43272	Endoscopy, bile duct/pancreas
43450	Dilate esophagus
43451	Redilate esophagus
43453	Dilate esophagus
43455	Dilate esophagus
43456	Dilate esophagus
43600	Biopsy of stomach
43750	Place gastrostomy tube
43760	Change gastrostomy tube
43870	Repair stomach opening
44100	Biopsy of bowel
44312	Revision of ileostomy
44340	Revision of colostomy
44345	Revision of colostomy
44346	Revision of colostomy
44360	Small bowel endoscopy
44361	Small bowel endoscopy, biopsy
44363	Small bowel endoscopy
44364	Small bowel endoscopy
44366	Small bowel endoscopy
45369	Small bowel endoscopy
44372	Small bowel endoscopy
44373	Small bowel endoscopy
44380	Small bowel endoscopy
44382	Small bowel endoscopy
44385	Endoscopy of bowel pouch
44386	Endoscopy, bowel pouch, biopsy
44388	Colon endoscopy
44389	Colonoscopy with biopsy
44390	Colonoscopy for foreign body
44391	Colonoscopy for bleeding

44392	Colonoscopy and polypectomy
44393	Colonoscopy, lesion removal
45000	Drainage of pelvic abscess
45005	Drainage of rectal abscess
45020	Drainage of rectal abscess
45100	Biopsy of rectum
45108	Removal of anorectal lesion
45150	Excision of rectal stricture
45170	Excision of rectal lesion
45180	Removal of rectal lesion
45305	Proctosigmoidoscopy; biopsy
45307	Proctosigmoidoscopy
45310	Proctosigmoidoscopy
45315	Proctosigmoidoscopy
45317	Proctosigmoidoscopy
45320	Proctosigmoidoscopy
45321	Proctosigmoidoscopy
45331	Sigmoidoscopy and biopsy
45332	Sigmoidoscopy
45333	Sigmoidoscopy and polypectomy
45334	Sigmoidoscopy for bleeding
45336	Sigmoidoscopy, lesion removal
45337	Sigmoidoscopy, decompression
45355	Surgical colonoscopy
45378	Diagnostic colonoscopy
45379	Colonoscopy
45380	Colonoscopy and biopsy
45382	Colonoscopy, control bleeding
45383	Colonoscopy, lesion removal
45385	Colonoscopy, lesion removal
45500	Repair of rectum
45505	Repair of rectum
45560	Repair of rectocele
45900	Reduction of rectal prolapse
45905	Dilation of anal sphincter
45910	Dilation of rectal narrowing
45915	Remove rectal obstruction
46000	Incision of anal fistula
46030	Removal of rectal marker
46040	Incision of rectal abscess
46045	Incision of rectal abscess
46050	Incision of anal abscess
46060	Incision of rectal abscess
46080	Incision of anal sphincter
46200	Removal of anal fissure
46210	Removal of anal crypt
46211	Removal of anal crypts
46220	Removal of anal tab
46250	Hemorrhoidectomy
46255	Hemorrhoidectomy
46257	Remove hemorrhoids and fissure
46258	Remove hemorrhoids and fistula
46260	Hemorrhoidectomy
46261	Remove hemorrhoids and fissure
46262	Remove hemorrhoids and fistula
46270	Removal of anal fistula
46275	Removal of anal fistula
46280	Removal of anal fistula
46285	Removal of anal fistula
46608	Anoscopy; remove foreign body
46610	Anoscopy; remove lesion
46612	Anoscopy; remove lesions
46700	Repair of anal stricture
46705	Repair of anal stricture
46750	Repair of anal sphincter
46753	Reconstruction of anus
46754	Removal of suture from anus
46760	Repair of anal sphincter
46922	Excision of anal lesion(s)
46924	Destruction, anal lesion(s)
46937	Cryotherapy of rectal lesion
46938	Cryotherapy of rectal lesion
47000	Needle biopsy of liver
47510	Insert catheter, bile duct
47525	Change bile duct catheter
47530	Revise, reinsert bile tube
47552	Biliary endoscopy, thru skin
47553	Biliary endoscopy, thru skin
47554	Biliary endoscopy, thru skin
47555	Biliary endoscopy, thru skin
47630	Remove bile duct stone
48102	Needle biopsy, pancreas
49000	Exploration of abdomen
49080	Puncture, peritoneal cavity
49081	Removal of abdominal fluid
49085	Remove abdomen foreign body
49180	Biopsy, abdominal mass
49300	Peritoneoscopy
49301	Peritoneoscopy with biopsy
49302	Peritoneoscopy with x-ray
49303	Peritoneoscopy, x-ray & biopsy
49400	Air injection into abdomen
49401	Air injection into abdomen
49420	Insert abdominal drain
49421	Insert abdominal drain
49425	Insert abdomen-venous drain
49426	Revise abdomen-venous shunt
49500	Repair inguinal hernia
49505	Repair inguinal hernia
49510	Repair hernia, remove testis
49515	Repair inguinal hernia
49520	Rerepair inguinal hernia
49525	Repair inguinal hernia
49540	Repair lumbar hernia
49550	Repair femoral hernia
49552	Repair femoral hernia
49555	Repair femoral hernia
49560	Repair abdominal hernia
49565	Rerepair abdominal hernia
49570	Repair epigastric hernia
49575	Repair epigastric hernia
49580	Repair umbilical hernia
49581	Repair umbilical hernia
49590	Repair abdominal hernia
50020	Drainage of kidney abscess
50040	Drainage of kidney
50200	Biopsy of kidney
50390	Drainage of kidney lesion
50392	Insert kidney drain
50393	Insert ureteral tube
50395	Create passage to kidney
50396	Measure kidney pressure
50398	Change kidney tube
50520	Close kidney-skin fistula
50551	Kidney endoscopy
50553	Kidney endoscopy
50555	Kidney endoscopy & biopsy
50557	Kidney endoscopy & treatment
50559	Renal endoscopy-radiotracer
50561	Kidney endoscopy & treatment
50570	Kidney endoscopy
50572	Kidney endoscopy
50574	Kidney endoscopy & biopsy
50576	Kidney endoscopy & treatment
50578	Renal endoscopy-radiotracer
50580	Kidney endoscopy & treatment
50590	Fragmenting of kidney stone
50684	Injection for ureter x-ray
50688	Change of ureter tube
50690	Injection for ureter x-ray
50951	Endoscopy of ureter
50953	Endoscopy of ureter
50955	Ureter endoscopy & biopsy
50957	Ureter endoscopy & treatment
50959	Ureter endoscopy & tracer
50961	Ureter endoscopy & treatment
50970	Ureter endoscopy
50972	Ureter endoscopy & catheter
50974	Ureter endoscopy & biopsy
50976	Ureter endoscopy & treatment
50978	Ureter endoscopy & tracer
50980	Ureter endoscopy & treatment
51005	Drainage of bladder
51010	Drainage of bladder
51020	Incise & treat bladder
51030	Incise & treat bladder
51045	Incise bladder, drain ureter
51500	Removal of bladder cyst
51600	Injection for bladder x-ray
51605	Preparation for bladder x-ray
51610	Injection for bladder x-ray
51710	Change of bladder tube
51725	Simple cystometrogram
51726	Complex cystometrogram
51772	Urethra pressure profile
51795	Anal/urinary muscle study
51865	Repair of bladder wound
51880	Repair of bladder opening
51900	Repair bladder/vagina lesion
51920	Close bladder-uterus fistula
52000	Cystoscopy
52005	Cystoscopy & ureter catheter
52007	Cystoscopy and biopsy
52010	Cystoscopy & duct catheter
52204	Cystoscopy
52214	Cystoscopy and treatment
52224	Cystoscopy and treatment
52234	Cystoscopy and treatment
52235	Cystoscopy and treatment
52240	Cystoscopy and treatment
52250	Cystoscopy and radiotracer
52260	Cystoscopy and treatment
52270	Cystoscopy & revise urethra
52275	Cystoscopy & revise urethra
52276	Cystoscopy and treatment
52277	Cystoscopy and treatment
52281	Cystoscopy and treatment
52283	Cystoscopy and treatment
52285	Cystoscopy and treatment
52290	Cystoscopy and treatment
52300	Cystoscopy and treatment
52305	Cystoscopy and treatment
52310	Cystoscopy and treatment
52315	Cystoscopy and treatment
52317	Remove bladder stone
52318	Remove bladder stone
52320	Cystoscopy and treatment
52325	Cystoscopy, stone removal
52330	Cystoscopy and treatment
52332	Cystoscopy and treatment
52334	Create passage to kidney
52335	Endoscopy of urinary tract
52336	Cystoscopy, stone removal
52337	Cystoscopy, stone removal
52338	Cystoscopy and treatment
52340	Cystoscopy and treatment
52500	Revison of bladder neck
52601	Prostatectomy (TURP)
52606	Control postop bleeding
52612	Prostatectomy, first stage
52614	Prostatectomy, second stage
52620	Remove residual prostate
52630	Remove prostate regrowth
52640	Relieve bladder contracture
52650	Prostatectomy
52700	Drainage of prostate abscess
53000	Incision of urethra
53010	Incision of urethra
53020	Incision of urethra
53040	Drainage of urethra abscess
53200	Biopsy of urethra
53210	Removal of urethra
53215	Removal of urethra
53220	Treatment of urethra lesion
53230	Removal of urethra lesion
53235	Removal of urethra lesion
53240	Surgery for urethra pouch
53250	Removal of urethra gland

53260 Treatment of urethra lesion
53265 Treatment of urethra lesion
53275 Repair of urethra defect
53400 Revise urethra, 1st stage
53405 Revise urethra, 2nd stage
53410 Reconstruction of urethra
53420 Reconstruct urethra, stage 1
53425 Reconstruct urethra, stage 2
53430 Reconstruction of urethra
53440 Correct bladder function
53442 Remove perineal prosthesis
53447 Remove artificial sphincter
53449 Correct artificial sphincter
53450 Revision of urethra
53460 Revision of urethra
53502 Repair of urethra injury
53505 Repair of urethra injury
53510 Repair of urethra injury
53515 Repair of urethra injury
53520 Repair of urethra defect
53605 Dilate urethra stricture
53665 Dilation of urethra
54000 Slitting of prepuce
54001 Slitting of prepuce
54057 Laser surg, penis lesion(s)
54060 Excision of penis lesion(s)
54065 Destruction, penis lesion(s)
54100 Biopsy of penis
54105 Biopsy of penis
54110 Treatment of penis lesion
54115 Treatment of penis lesion
54120 Partial removal of penis
54125 Removal of penis
54150 Circumcision
54152 Circumcision
54160 Circumcision
54161 Circumcision
54220 Treatment of penis lesion
54300 Revision of penis
54360 Penis plastic surgery
54420 Revision of penis
54435 Revision of penis
54440 Repair of penis
54450 Preputial stretching
54500 Biopsy of testis
54505 Biopsy of testis
54510 Removal of testis lesion
54520 Removal of testis
54530 Removal of testis
54550 Exploration for testis
54600 Reduce testis torsion
54620 Suspension of testis
54640 Suspension of testis
54660 Revision of testis
54670 Repair testis injury
54680 Relocation of testis(es)
54700 Drainage of scrotum
54800 Biopsy of epididymis
54820 Exploration of epididymis
54830 Remove epididymis lesion
54840 Remove epididymis lesion
54860 Removal of epididymis
54861 Removal of epididymis
54900 Fusion of spermatic ducts
54901 Fusion of spermatic ducts
55040 Removal of hydrocele
55041 Removal of hydroceles
55060 Repair of hydrocele
55100 Drainage of scrotum abscess
55110 Explore scrotum
55120 Removal of scrotum lesion
55150 Removal of scrotum
55175 Revision of scrotum
55180 Revision of scrotum
55200 Incision of sperm duct
55400 Repair of sperm duct
55500 Removal of hydrocele
55520 Removal of sperm cord lesion
55530 Revise spermatic cord veins
55535 Revise spermatic cord veins
55540 Revise hernia and sperm veins
55600 Incise sperm duct pouch
55605 Incise sperm duct pouch
55650 Remove sperm duct pouch
55680 Remove sperm pouch lesion
55700 Biopsy of prostate
55705 Biopsy of prostate
55720 Drainage of prostate abscess
56000 Drainage of perineal abscess
56100 Biopsy of perineum
56200 Repair of perineum
56300 Pelvis laparoscopy, dx
56301 Laparoscopy, surgical
56302 Laparoscopy, surgical
56303 Laparoscopy, surgical
56304 Laparoscopy, surgical
56305 Laparoscopy, surgical
56306 Laparoscopy, surgical
56307 Laparoscopy, surgical
56309 Laparoscopy, surgical
56350 Hysteroscopy, diagnostic
56352 Hysteroscopy, surgical
56353 Hysteroscopy, surgical
56354 Hysteroscopy, surgical
56355 Hysteroscopy, surgical
56356 Hysteroscopy, surgical
56405 I & D of vulva/perineum
56440 Surgery for vulva lesion
56515 Destruction, vulva lesion(s)
56620 Partial removal of vulva
56625 Removal of vulva
56700 Partial removal of hymen
56720 Incision of hymen
56740 Remove vagina gland lesion
56800 Repair of vagina
56810 Repair of perineum
57000 Exploration of vagina
57010 Drainage of pelvic abscess
57020 Drainage of pelvic fluid
57065 Destruction vagina lesion(s)
57105 Biopsy of vagina
57130 Remove vagina lesion
57135 Remove vagina lesion
57180 Treat vaginal bleeding
57200 Repair of vagina
57210 Repair vagina/perineum
57220 Revision of urethra
57230 Repair of urethral lesion
57240 Repair bladder and vagina
57250 Repair rectum and vagina
57260 Repair of vagina
57265 Extensive repair of vagina
57268 Repair of bowel bulge
57300 Repair rectum-vagina fistula
57310 Repair urethrovaginal lesion
57311 Repair urethrovaginal lesion
57320 Repair bladder-vagina lesion
57400 Dilation of vagina
57410 Pelvic examination
57451 Pelvis endoscopy and biopsy
57513 Laser surgery of cervix
57520 Conization cervix
57530 Removal of cervix
57550 Removal of residual cervix
57700 Revision of cervix
57720 Revision of cervix
57800 Dilation of cervical canal
57820 D&C of residual cervix
58120 Dilation and curettage (D&C)
58145 Removal of uterus lesion
58600 Division of fallopian tube
58615 Occlude fallopian tube(s)
58800 Drainage of ovarian cyst(s)
58820 Drainage of ovarian abscess
58900 Biopsy of ovary(s)
58980 Laparoscopy of pelvis
58982 Laparoscopy—tubal cautery
58983 Laparoscopy—tubal block
58984 Laparoscopy of pelvis
58985 Laparoscopy of pelvis
58986 Pelvis laparoscopy and biopsy
58987 Laparoscopy of pelvis
58988 Laparoscopy, remove adnexa
58990 Diagnostic hysteroscopy
58992 Treatment hysteroscopy
58994 Treatment hysteroscopy
58996 Treatment hysteroscopy
59400 Vaginal delivery—global
59410 Vaginal delivery only
59414 Deliver placenta
59812 Treatment of miscarriage
59820 Care of miscarriage
59821 Treatment of miscarriage
59840 Abortion
59841 Abortion
60000 Drain thyroid/tongue cyst
60200 Remove thyroid lesion
60220 Partial removal of thyroid
60225 Partial removal of thyroid
60280 Remove thyroid duct lesion
60281 Remove thyroid duct lesion
61020 Remove brain cavity fluid
61026 Injection into brain canal
61050 Remove brain canal fluid
61055 Injection into brain canal
61070 Brain canal shunt procedure
61215 Insert brain-fluid device
61790 Treat trigeminal nerve
61791 Treat trigeminal tract
61885 Implant neuroreceiver
61888 Revise/remove neuroreceiver
62194 Replace/irrigate catheter
62225 Replace/irrigate catheter
62230 Replace/revise brain shunt
62256 Remove brain cavity shunt
62268 Drain spinal cord cyst
62269 Needle biopsy spinal cord
62270 Spinal fluid tap, diagnostic
62272 Drain spinal fluid
62273 Treat lumbar spine lesion
62274 Inject spinal anesthetic
62276 Inject spinal anesthetic
62277 Inject spinal anesthetic
62278 Inject spinal anesthetic
62279 Inject spinal anesthetic
62280 Treat spinal cord lesion
62282 Treat spinal canal lesion
62288 Injection into spinal canal
62289 Injection into spinal canal
62294 Injection into spinal artery
63600 Remove spinal cord lesion
63610 Stimulation of spinal cord
63650 Implant neuroelectrodes
63660 Revise/remove neuroelectrode
63685 Implant neureceiver
63688 Revise/remove neuroreceiver
63744 Revision of spinal shunt
63746 Removal of spinal shunt
63750 Insert spinal canal catheter
63780 Insert spinal canal catheter
64410 Injection for nerve block
64415 Injection for nerve block
64417 Injection for nerve block
64420 Injection for nerve block
64421 Injection for nerve block
64430 Injection for nerve block
64442 Injection for nerve block
64443 Injection for nerve block

64510	Injection for nerve block
64520	Injection for nerve block
64530	Injection for nerve block
64575	Implant neuroelectrodes
64590	Implant neuroreceiver
64595	Revise/remove neuroreceiver
64600	Injection treatment of nerve
64605	Injection treatment of nerve
64610	Injection treatment of nerve
64620	Injection treatment of nerve
64622	Injection treatment of nerve
64623	Injection treatment of nerve
64630	Injection treatment of nerve
64680	Injection treatment of nerve
64702	Revise finger/toe nerve
64704	Revise hand/foot nerve
64708	Revise arm/leg nerve
64712	Revision of sciatic nerve
64713	Revision of arm nerve(s)
64714	Revise low back nerve(s)
64716	Revision of cranial nerve
64718	Revise ulnar nerve at elbow
64719	Revise ulnar nerve at wrist
64721	Carpal tunnel surgery
64722	Relieve pressure on nerve(s)
64726	Release foot/toe nerve
64727	Internal nerve revision
64732	Incision of brow nerve
64734	Incision of cheek nerve
64736	Incision of chin nerve
64738	Incision of jaw nerve
64740	Incision of tongue nerve
64742	Incision of facial nerve
64744	Incise nerve, back of head
64746	Incise diaphragm nerve
64771	Sever cranial nerve
64772	Incision of spinal nerve
64774	Remove skin nerve lesion
64776	Remove digit nerve lesion
64778	Added digit nerve surgery
64782	Remove limb nerve lesion
64783	Added limb nerve surgery
64784	Remove nerve lesion
64786	Remove sciatic nerve lesion
64787	Implant nerve end
64788	Remove skin nerve lesion
64790	Removal of nerve lesion
64792	Removal of nerve lesion
64795	Biopsy of nerve
64802	Remove sympathetic nerves
64830	Microrepair of nerve
64831	Repair of digit nerve
64832	Repair additional nerve
64834	Repair of hand or foot nerve
64835	Repair of hand or foot nerve
64836	Repair of hand or foot nerve
64837	Repair additional nerve
64840	Repair of leg nerve
64856	Repair/transpose nerve
64857	Repair arm/leg nerve
64858	Repair sciatic nerve
64859	Additional nerve surgery
64861	Repair of arm nerves
64862	Repair of low back nerves
64864	Repair of facial nerve
64865	Repair of facial nerve
64870	Fusion of facial/other nerve
64872	Subsequent repair of nerve
64874	Repair & revise nerve
64876	Repair nerve-shorten bone
64890	Nerve graft, hand or foot
64891	Nerve graft, hand or foot
64892	Nerve graft, arm or leg
64893	Nerve graft, arm or leg
64895	Nerve graft, hand or foot
64896	Nerve graft, hand or foot
64897	Nerve graft, arm or leg
64898	Nerve graft, arm or leg
64901	Additional nerve graft
64902	Additional nerve graft
64905	Nerve pedicle transfer
64907	Nerve pedicle transfer
65091	Revise eye
65903	Revise eye with implant
65101	Removal of eye
65103	Remove eye/insert implant
65105	Remove eye/attach implant
65110	Removal of eye
65112	Remove eye, revise socket
65114	Remove eye, revise socket
65130	Insert ocular implant
65135	Insert ocular implant
65140	Attach ocular implant
65150	Revise ocular implant
65155	Reinsert ocular implant
65175	Removal of ocular implant
65235	Remove foreign body from eye
65260	Remove foreign body from eye
65265	Remove foreign body from eye
65270	Repair of eye wound
65272	Repair of eye wound
65275	Repair of eye wound
65280	Repair of eye wound
65285	Repair of eye wound
65290	Repair of eye socket wound
65400	Removal of eye lesion
65410	Biopsy of cornea
65420	Removal of eye lesion
65426	Removal of eye lesion
65710	Corneal transplant
65730	Corneal transplant
65750	Corneal transplant
65755	Corneal transplant
65800	Drainage of eye
65805	Drainage of eye
65810	Drainage of eye
65815	Drainage of eye
65850	Drainage of eye
65865	Incise inner eye adhesions
65870	Incise inner eye adhesions
65875	Incise inner eye adhesions
65880	Incise inner eye adhesions
65900	Remove eye lesion
65920	Remove implant from eye
65930	Remove blood clot from eye
66020	Injection treatment of eye
66030	Injection treatment of eye
66130	Remove eye lesion
66150	Incision of eye
66155	Incision of eye
66160	Incision of eye
66165	Incision of eye
66170	Incision of eye
66220	Repair eye lesion
66225	Repair/graft eye lesion
66250	Follow-up surgery of eye
66500	Incision of iris
66505	Incision of iris
66600	Remove iris and lesion
66605	Removal of iris
66625	Removal of iris
66630	Removal of iris
66635	Removal of iris
66680	Repair iris and ciliary body
66682	Repair iris and ciliary body
66700	Destruction, ciliary body
66710	Destruction, ciliary body
66720	Destruction, ciliary body
66740	Destruction, ciliary body
66762	Revision of iris
66821	Lasering, secondary cataract
66830	Removal of lens lesion
66840	Removal of lens material
66850	Removal of lens material
66852	Removal of lens material
66920	Extraction of lens
66930	Extraction of lens
66940	Extraction of lens
66983	Remove cataract, insert lens
66984	Remove cataract, insert lens
66985	Insert lens prosthesis
66986	Exchange lens prosthesis
67005	Partial removal of eye fluid
67010	Partial removal of eye fluid
67015	Release of eye fluid
67025	Replace eye fluid
67030	Incise inner eye strands
67031	Laser surgery, eye strands
67036	Removal of inner eye fluid
67038	Strip retinal membrane
67039	Laser treatment of retina
67040	Laser treatment of retina
67101	Repair detached retina
67105	Repair detached retina
67107	Repair detached retina
67108	Repair detached retina
67109	Repair detached retina
67112	Re-repair detached retina
67115	Release, encircling material
67120	Remove eye implant material
67121	Remove eye implant material
67141	Treatment of retina
67208	Treatment of retinal lesion
67218	Treatment of retinal lesion
67227	Treatment of retinal lesion
67250	Reinforce eye wall
67255	Reinforce/graft eye wall
67311	Revise eye muscle
67312	Revise two eye muscles
67314	Revise eye muscle
67316	Revise two eye muscles
67318	Revise eye muscle(s)
67320	Revise eye muscle(s)
67331	Eye surgery follow-up
67332	Rerevise eye muscles
67350	Biopsy eye muscle
67400	Explore/biopsy eye socket
67405	Explore/biopsy eye socket
67412	Explore/treat eye socket
67413	Explore/treat eye socket
67415	Biopsy of eye
67420	Explore/treat eye socket
67430	Explore/treat eye socket
67440	Explore/drain eye socket
67450	Explore/biopsy eye socket
67550	Insert eye socket implant
67560	Revise eye socket implant
67715	Incision of eyelid fold
67808	Remove eyelid lesion(s)
67830	Revise eyelashes
67835	Revise eyelashes
67880	Revision of eyelid
67882	Revision of eyelid
67901	Repair eyelid defect
67902	Repair eyelid defect
67903	Repair eyelid defect
67904	Repair eyelid defect
67906	Repair eyelid defect
67908	Repair eyelid defect
67909	Revise eyelid defect
67911	Revise eyelid defect
67914	Repair eyelid defect
67916	Repair eyelid defect
67917	Repair eyelid defect
67921	Repair eyelid defect
67923	Repair eyelid defect
67924	Repair eyelid defect
67935	Repair eyelid wound

67950 Revision of eyelid
67961 Revision of eyelid
67966 Revision of eyelid
67971 Reconstruction of eyelid
67973 Reconstruction of eyelid
67974 Reconstruction of eyelid
67975 Reconstruction of eyelid
68130 Remove eyelid lining lesion
68320 Revise/graft eyelid lining
68325 Revise/graft eyelid lining
68326 Revise/graft eyelid lining
68328 Revise/graft eyelid lining
68330 Revise eyelid lining
68335 Revise/graft eyelid lining
68340 Separate eyelid adhesions
68360 Revise eyelid lining
68362 Revise eyelid lining
68500 Removal of tear gland
68505 Partial removal tear gland
68510 Biopsy of tear gland
68520 Removal of tear sac
68525 Biopsy of tear sac
68540 Remove tear gland lesion
68550 Remove tear gland lesion
68700 Repair tear ducts
68720 Create tear sac drain
68745 Create tear duct drain
68750 Create tear duct drain
68825 Explore tear duct system
69110 Partial removal external ear
69120 Removal of external ear
69140 Remove ear canal lesion(s)
69145 Remove ear canal lesion(s)
69150 Extensive ear canal surgery
69205 Clear outer ear canal
69310 Rebuild outer ear canal
69320 Rebuild outer ear canal
69421 Incision of eardrum
69424 Remove ventilating tube
69436 Create eardrum opening
69440 Exploration of middle ear
69450 Eardrum revision
69501 Mastoidectomy
69502 Mastoidectomy
69505 Remove mastoid structures
69511 Extensive mastoid surgery
69530 Extensive mastoid surgery
69550 Remove ear lesion
69552 Remove ear lesion
69601 Mastoid surgery revision
69602 Mastoid surgery revision
69603 Mastoid surgery revision
69604 Mastoid surgery revision
69605 Mastoid surgery revision
69620 Repair of eardrum
69631 Repair eardrum structures
69632 Rebuild eardrum structures
69633 Rebuild eardrum structures
69635 Repair eardrum structures
69636 Rebuild eardrum structures
69637 Rebuild eardrum structures
69641 Revise middle ear and mastoid
69642 Revise middle ear and mastoid
69643 Revise middle ear and mastoid
69644 Revise middle ear and mastoid
69645 Revise middle ear and mastoid
69646 Revise middle ear and mastoid
69650 Release middle ear bone
69660 Revise middle ear bone
69661 Revise middle ear bone
69662 Revise middle ear bone
69666 Repair middle ear structures
69667 Repair middle ear structures
69670 Remove mastoid air cells
69676 Remove middle ear nerve
69700 Close mastoid fistula
69710 Implant/replace hearing aid
69711 Remove/repair hearing aid
69720 Release facial nerve
69725 Release facial nerve
69740 Repair facial nerve
69745 Repair facial nerve
69801 Incise inner ear
69802 Incise inner ear
69805 Explore inner ear
69806 Explore inner ear
69820 Establish inner ear window
69840 Revise inner ear window
69905 Remove inner ear
69910 Remove inner ear and mastoid
69915 Incise inner ear nerve
69930 Implant cochlear device

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Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Area, Pacific Ocean Offshore of Camp Pendleton, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Corps establishment of a naval restricted anchorage area in the waters of the Pacific Ocean offshore of Camp Pendleton, San Diego County, California. The U.S. Navy needs to establish an explosive anchorage area for safety purposes.

DATES: Interim final rule effective October 15, 1993. Written comments must be received on or before November 15, 1993.

ADDRESSES: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth White at (619) 455-9422 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer of the Naval Weapons Station has requested the Corps to establish a restricted anchorage area (identified as Fallbrook), offshore of Camp Pendleton, San Diego County, California. In accordance with Naval Sea Systems Command, OPS Volume 1 Manual, Ammunition and Explosives Ashore Safety Regulations for Handling, Storing, Production, Renovation, and Shipping, a safety distance of 9,000 feet to inhabited structures is required for the anticipated net explosive weight of 5,500,000 pounds. During loading/unloading, vessel traffic and anchorage would be restricted to a distance not closer than 5,400 feet from the vessel. The Fallbrook anchorage site has been intermittently utilized in the past and its use needs to be continued in support of replenishment operations associated with the transfer of ordnance from the Fallbrook Annex to and from naval combatants and ammunition ships. The Navy's utilization of this anchorage is expected to grow to a maximum of 10 days per month. This planned long-term utilization for replenishment operations necessitates establishment of the restricted anchorage. There is no anticipated navigational hazard or interference with existing waterway traffic. There are no recreational or commercial fishery operations presently in or using the waters within this area because of ongoing military operations. Therefore, no loss of resources or use of resources would be borne by the public. The Corps Los Angeles District Engineer issued a public notice on June 2, 1993, which solicited comments on this proposed restricted area to all known interested parties. The District did not receive any objections to the establishment of the restricted anchorage area. This interim final rule is made effective immediately due to the need for safety during transfer of ordnance in this area.

Economic Assessment and Certification

This interim final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. These interim final rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small business (i.e., small businesses and small government) jurisdictions. There is no anticipated navigational hazard or interference with existing waterway traffic. There are no recreational or commercial fishery operations presently in or using the waters within this area because of ongoing military operations. Therefore, no loss of resources or use of resources would be borne by the public. Therefore, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.905 is added to read as follows:

§ 334.905 Pacific Ocean, Offshore of Camp Pendleton, California; Fallbrook restricted area.

(a) *The area.* The waters of the Gulf of Santa Catalina, offshore of Camp Pendleton in the Pacific Ocean, San Diego County, California. The center of the restricted area is located at 33°18.6′ N. latitude, 117°32.0′ W. longitude, with a radius of 9,000 feet.

(b) *The regulations.* (1) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Coast Guard, local, State or Federal law enforcement agencies.

(2) Loitering, dredging, dragging, anchoring, seining, fishing, and similar activities within the restricted area during vertical replenishment operations use is prohibited.

(c) *Enforcement.* The regulations in this section shall be enforced by the U.S. Coast Guard, local, State, or Federal law enforcement agencies.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25312 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

Corps of Engineers

33 CFR Part 334

Danger Zones and Restricted Area, Pacific Ocean, Hawaiian Islands

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is making minor editorial changes to the regulations which establish two danger zones and a restricted area in the waters of the Pacific Ocean offshore of several of the Hawaiian Islands. These amendments are necessary as a result of organizational changes made in Navy Commands. No other changes to the danger zones or restricted area are being made.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Kern at (808) 438–8551 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR 334.1340, 334.1370 and 334.1400 with regard to the identity of the agencies responsible for enforcing the regulations within those specified areas. There are no amendments being made to these regulations which would affect the size or location of the danger zones or any changes that would affect the Government's use or public access to the areas. Since these amendments are editorial in nature, notice of proposed rulemaking procedures is unnecessary and impracticable and these amendments are published as final rules.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. The changes to these regulations are editorial and reflect only changes in Department of the Navy organization. There will be no additional impact on recreational, commercial or fishing vessels within the areas. There will be no impacts on small businesses or governments in the area. I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Restricted areas.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.1340 is amended by revising paragraph (c) to read as follows:

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

* * * * *

(c) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Naval Base Pearl Harbor, Hawaii 96860–5020 and such agencies as he/she may designate.

3. Section 334.1370 is amended by revising paragraph (b)(2) to read as follows:

§ 334.1370 Pacific Ocean at Keahi Point, Island of Oahu; danger zone.

* * * * *

(b) *The regulations.* * * *

(2) The regulations in this section shall be enforced by the Commanding Officer, Explosive Ordnance Disposal Training and Evaluation Unit One, Barbers Point, Hawaii 96862–5600.

4. Section 334.1400 is amended by revising paragraph (b)(4) to read as follows:

§ 334.1400 Pacific Ocean at Barbers Point, Island of Oahu, Hawaii; restricted area.

* * * * *

(b) *The regulations.* * * *

(4) The regulations in this section shall be enforced by the Officer in Charge, Fleet Area Control and Surveillance Facility, Pearl Harbor, Hawaii 96860–7625, and such agencies as he/she may designate.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25313 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

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33 CFR Part 334

Danger Zones, Atlantic Ocean South of the Entrance to the Chesapeake Bay, Virginia Beach, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations which establish two danger zones in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay to accommodate current U.S. Navy nighttime training requirements. The amendments include restrictions on use of the water area after darkness when the ranges are in use and one of the danger zones will be expanded seaward 2,500 yards. It should be noted, however, that the expanded area continues to be within the boundaries of the existing larger danger zone. The expansion of the danger zone is necessary to provide an additional measure of safety for vessels operating in the area.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441–7653 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR 334.380 and 334.390.

The Commanding Officer, Fleet Combat Training Center, Atlantic, U.S.

Navy, has requested that the danger zones be amended to reflect changes in the use of the areas. The purpose of the change is to accommodate nighttime naval training at the ranges. There are no changes which will prohibit the public's use of the area. Presently, from sunrise until sunset, vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit. This amendment will make this restriction on transit of the area to apply 24 hours a day. The Navy will continue to display red flags while firing is in progress during daylight hours and will display red flashing lights during periods of darkness to alert mariners that the range is in use. On April 2, 1993, we published these proposed changes in the Notice of Proposed Rulemaking Section of the **Federal Register** (58 FR 17373–17374), with the comment period expiring on May 3, 1993. We received no comments. However, an omission was made in the proposed regulations with regard to 33 CFR 334.390(b) (4) and (5). The final regulations (b)(5) are corrected to require the Navy lookouts to utilize night vision systems for nighttime surveillance of the danger zone and the regulations in (b)(5) are corrected by adding that firing will not be allowed during periods of low visibility if a properly marked vessel is not recognizable to a distance of 7,500 yards, or if visibility would preclude a vessel from observing the red range flags or lights. We are making these changes without further public notice or procedures since the additional requirements will require additional action by the Navy, but will not impose any further restrictions or require the public to take any further action. It should be noted that these corrections to § 334.390 make it similar to the regulations in § 334.380.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. The addition of nighttime use of the danger zones will have only minimal impact on recreational, commercial or fishing vessels within the area because the vessels are not prohibited from use of the area except when firing is in progress at the range. There will be no impacts on small businesses or governments in the area. I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, restricted areas.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.380 is revised to read as follows:

§ 334.380 Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia; naval firing range.

(a) *The danger zone.* All of the water within a sector extending seaward a distance of 7,500 yards between radial lines bearing 35° true and 92° true, respectively, from a point on the shore at latitude 36 47′33″ N, longitude 75 58′23″ W.

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations which are visible from the water a minimum distance of four (4) nautical miles.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range at Fleet Combat Center. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on any ranges during the periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigational lights, or which would preclude a vessel from observing the red range flags or lights.

(6) The regulations in this section shall be enforced by the Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, Virginia, and other such agencies as he/she may designate.

3. Section 334.390 paragraphs (b)(1), (2), (4) and (5) are revised to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

* * * * *

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

* * * * *

(4) Lookout posts will be manned by the activity or agency operating the firing range at the Fleet Combat Center, Atlantic, Dam Neck, Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25314 Filed 10–14–93; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7003

[AZ–930–4210–06; AZA 25553]

Withdrawal of National Forest System Land for the Northern Arizona Visitor Center and Interagency Administrative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 353.04 acres of National Forest System land from mining for 20 years to protect significant capital improvements associated with the proposed Northern Arizona Visitor Center and Interagency Administrative Site. The center will be a cooperative venture between the Forest Service, the National Park Service, and Arizona State Parks. The land has been and will remain open to mineral leasing and surface users authorized by the Forest Service.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investments of the proposed Northern Arizona Visitor Center and Interagency Administrative Site:

Gila and Salt River Meridian

Prescott National Forest

T. 14 N., R. 4 E.,

Sec. 34, SE¼, and SE¼SW¼;
Sec. 35, lots 7 and 8, and W½SW¼.

The area described contains 353.04 acres in Yavapai County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 5, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–25274 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–32–M

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43 CFR Public Land Order 7004

[MT–930–4210–06; 60641, MTM 41507]

Partial Revocation of Executive Order Dated July 9, 1910, and Executive Order No. 3053 Dated February 28, 1919; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Executive orders insofar as they affect 5.51 acres of National Forest System land withdrawn for Coal Reserve Montana No. 1 and a game preserve. The land is no longer needed for these purposes, and the revocations are needed to permit disposal of land through direct sale under the Townsite Act of July 31, 1958. This action will open the land to such forms of dispositions as mayby law be made of National Forest System land. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM War, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2449.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 9, 1910, and Executive Order No. 3053 dated February 28, 1919, which withdrew National Forest System land for classification and appraisement of coal values and a game preserve, are hereby revoked insofar as they affect the following described land:

Principal Meridian

Gallatin National Forest

T. 9 S., R. 8 E.,
Sec. 16, lot 11.

The area described contains 5.51 acres in Park County.

2. At 9 a.m. on November 15, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: October 5, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–25273 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–DN–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–259; FCC 93–467]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay order.

SUMMARY: This document administratively stays the retransmission consent provisions of § 76.64(e) and § 76.62(a) as those rules were adopted in the Commission's Report and Order, only with respect to the issue of antenna ownership as provided by § 76.64(e) and with respect to the continued validity of existing arrangements for partial carriage between a broadcaster and a cable operator, as generally prohibited by § 76.62(a). This stay is issued in response to two separate requests seeking relief from each of these provisions. The Wireless Cable Association and the National Private Cable Association on September 29, 1993, requested a stay of § 76.64(e), and Media-Com Television, on August 4, 1993, requested a temporary waiver of § 76.62(a). This action is intended to provide the Commission with an opportunity to fully consider the specific issues raised and the oppositions thereto. This action will also allow the Wireless Cable Association and the National Private Cable Association, to continue retransmission consent negotiations, and will allow Media-Com, and similarly situated entities, to continue providing programming which serves the public interest, pursuant to existing arrangements with cable operators for partial carriage of a broadcast signal, until such time as the Commission has addressed these issues on reconsideration.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 416–0856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Stay Order, MM Docket No. 92–259, adopted October 5, 1993, and released October 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (ITS), 1919 M Street, NW., Washington, DC 20036.

Synopsis of the Order

1. On March 11, 1993 the Commission adopted a Report and Order, 58 FR 17350 (April 2, 1993), in this proceeding to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). We have received two separate requests seeking relief from two different provisions of our rules which were adopted in this proceeding. The Wireless Cable Association ("WCA")

and the National Private Cable Association ("NPCA") filed an Emergency Motion for Partial Stay on September 29, 1993, requesting that the Commission stay the effectiveness of the specific provisions of § 76.64(e), pending the Commission's decision on WCA's Petition for Partial Reconsideration, which requests a revision of this rule. In an Emergency Petition for Temporary Waiver filed on August 4, 1993, Media-Com Television, Inc. ("Media-Com") seeks a temporary waiver of § 76.62(e), pending the Commission's action on petitions for reconsideration requesting modification of this rule with respect to signals carried pursuant to retransmission consent agreements. Because both of these requests relate to the retransmission consent provisions of our rules, which will become effective October 6, 1993, we will address both requests herein.

2. With respect to the WCA and NPCA's request, § 76.64(e) of the Commission's rules provides that the "[p]rovision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor." WCA and NPCA request that the Commission exclude from retransmission consent requirements those wireless cable and private cable systems that provide access to VHF/UHF rooftop antennas at no charge, regardless of antenna ownership, until the Commission addresses the requested revision to this rule.

3. In their motion, WCA and NPCA argue that ownership or control of the antenna should not be the determining factor as to whether retransmission consent must be obtained. Instead, they argue that as long as the broadcast signals are provided free of charge, over a VHF/UHF antenna, then the ownership of the antenna should not matter. WCA and NPCA point to the unintended affects which the current version of the rule will have on wireless and private cable operators. Most specifically, even where a wireless operator has obtained the consent of all but one local broadcaster for the retransmission of their signals, if one broadcaster in the market refuses consent, such refusal will effectively negate the consent of all other broadcasters. The wireless or private cable operator would immediately be forced to disable or retrieve all of the VHF/UHF antennas in the field. WCA and NPCA further claim that the inability of a wireless or private cable operator to provide a common VHF/UHF antenna to homeowners, even without charge, to improve reception of local broadcast signals would seriously jeopardize the continued viability of most wireless or private cable operators. Alternatively, the wireless or private cable operator must immediately transfer ownership and control of the antennas to each individual subscriber, at a significant financial loss to the operator, who generally reuses such equipment at the termination of service. If the subscriber is asked to pay the operator for the antenna, WCA and NPCA claim, most subscribers will discontinue service.

4. We are persuaded by the evidence submitted by WCA and NPCA that wireless and private cable operators have raised issues which warrant further consideration, due to the detrimental consequences to wireless and private cable systems. We are also persuaded that these operators may be threatened with an imminent loss either of their subscriber base, if retransmission consent cannot be obtained from all local broadcasters, or from the forced transfer of ownership of the VHF/UHF antenna equipment. Accordingly, we will grant the request and stay the provisions of § 76.64(e) of our rules as it applies to wireless and private cable operators who are providing local broadcast signals via a VHF/UHF antenna for which no charge is made to the subscriber, until such time as we have addressed the issue in the pending petition for reconsideration. Our action is intended to provide us with an opportunity to fully consider the specific issues raised and the oppositions thereto. It also is intended to provide wireless and private cable operators with an opportunity to continue retransmission consent negotiations. We note that no television broadcast stations or associations have objected to the relief requested. We emphasize that this stay is limited both in duration and scope, and is being granted in response to the specific showing of imminent harm on the part of WCA and NPCA. We are cognizant of the oppositions filed by NCTA and Time Warner to WCA's Petition for Partial Reconsideration and we will address those concerns more fully when we act on that petition.

5. With respect to Media-Com's request for waiver, § 76.62(a) requires the carriage of the entire program schedule of any television station carried by a cable system. This requirement covers stations carried pursuant to retransmission consent agreements as well as must-carry stations. The only exception to the "carriage in its entirety" requirement is that specific programming that is prohibited under § 76.67 (sports blackout rule) or subpart F of part 76 of our rules (network nonduplication and syndicated exclusivity).

6. Media-Com is the licensee of low power television station W29AI, Akron, Ohio. W29AI has been carried on the Warner Cable system serving Summit County, Ohio, including Akron, on a part-time basis under a private agreement. The programming carried by this cable system is locally-produced and community-oriented. While Warner has notified Media-Com that it wishes to continue carriage of this locally-produced programming, it has indicated that it has no interest in carrying the syndicated programming broadcast by W29AI. Thus, Warner believes that a strict reading of § 76.62(a) requires it to terminate its carriage agreement with the station.

7. Media-Com requests a temporary waiver to permit Warner Cable to continue carrying its station's locally-originated programming until the resolution of the matter on reconsideration. Media-Com states that the waiver is needed to avoid an interim loss to the public of its present cable access to the locally-produced programming broadcast by W29AI. Media-Com notes that this programming, which includes local news, talk, information, religious and sports programs, is community-oriented and often unique. In some cases, W29AI is the only source of up-to-the-minute coverage of important local news stories. Thus, it argues, the requested waiver serves the public interest and should be granted.

8. We are persuaded by the evidence submitted by Media-Com that its station provides programming that serves the needs of subscribers to the Warner Cable system in Summit County. We also believe that there may be other similar arrangements between broadcasters and cable operators which have long benefitted the subscribers of cable systems and which would be affected in the same manner as Media-Com. As we have not had an opportunity to fully reconsider this issue, a stay will prevent any disruption of this programming service. Moreover, we note that Warner Cable has not opposed this request, and, indeed, appears willing to continue the carriage of this locally-produced programming. We believe that other cable operators would similarly welcome the opportunity to maintain

the status quo in this regard, pending our decision on reconsideration. In addition, we are concerned that absent a stay of our rule, Media-Com and similarly situated parties will have difficulty regaining carriage if the system is forced to remove the signal due to the provisions of this rule, and petitioners are subsequently successful on the merits of the petitions for reconsideration. Accordingly, on our own motion, we will stay the provisions of § 76.62(a) of our rules as it applies to existing arrangements between broadcasters and cable operators for partial carriage until resolution of this matter in the pending reconsideration proceeding. Our action is intended to provide us an opportunity to fully consider the specific issues described above. We emphasize that this stay is limited both in duration and scope and is being granted in response to a specific showing of imminent loss of local programming.

Ordering Clauses

9. Accordingly, *It is ordered*, That pursuant to section 4(i) and 4(j) of the Communications Act of 1934, as amended, the provisions of §§ 76.64(e) and § 76.62(a) of the Commission's rules are administratively STAYED until the release date of the Commission's Reconsideration Order in MM Docket No. 92–259 only to the extent provided herein with respect to the issue of antenna ownership and the issue of the continued validity of existing arrangements between broadcasters and cable operators for partial carriage of the broadcaster's signal. The reconsideration order will be published in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25263 Filed 10–14–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 93–60; FCC 93–450]

Private Land Mobile Radio Services; Co-Channel Protection Criteria Above 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has released a Report and Order that amends its regulations concerning the co-channel protection criteria for SMR and non-SMR radio systems operating above 800 MHz. This action will result in standardized co-channel protection criteria, will simplify the rules concerning these systems, and will reduce the workload burden on both the applicant and the Commission.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in the Matter of Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating Above 800 MHz, PR Docket No. 93–60, FCC 93–450, adopted September 22, 1993, and released October 8, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street NW. Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS Inc. 2100 M St. NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. This Report and Order concerns co-channel interference protection requirements for private land mobile radio stations operating in the 800/900 MHz frequency bands.

2. Under subpart S of part 90 of the Rules, co-channel SMR stations are required to be spaced a minimum of 70 miles from one another. Locating stations less than 70 miles apart, generally referred to as short-spacing, is permitted through the use of a short-spacing table when existing and/or proposed SMR stations operate at relatively low powers or antenna heights. Separation distances for non-SMR stations are determined from the non-overlap of the existing station's 40 dBu signal strength contour and the proposed station's 30 dBu contour.

3. In this Report and Order, the Commission amends Section 90.621 of the Rules to specify 70 miles as the minimum standard licensing distance between all co-channel 800/900 MHz stations, to provide a 40/22 dBu protection criteria for short-spacing applications, and to establish a table reflecting these criteria for determining co-channel short-spacing distances. Additional protection is provided when short-spacing to stations at certain high elevation sites, and also to stations operating on the 800/900 MHz offset frequencies in the U.S./Mexico border area.

4. With the termination of this proceeding and the adoption of new rules under § 90.621(b), the Commission also stated that on the effective date of this Report and Order, it will again accept applications whose receipt was suspended by the Private Radio Bureau's Order, DA92–1570, 57 FR 56342 (November 27, 1992), and the Notice in this proceeding, 58 FR 19397 (April 14, 1993).

Final Regulatory Flexibility Analysis

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because the adopted rule amendments will not have significant economic impact on small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. No comments were received addressing this certification in the Initial Regulatory Flexibility Analysis contained in the Notice of Proposed Rule Making in this proceeding.

Paperwork Reduction

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Part 90

Private land mobile radio, 800/900 MHz station spacings, Radio.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. Section 90.621 is amended by revising paragraph (b) introductory text, paragraph (b)(1), paragraph (b)(2) introductory text, the first sentence of paragraph (b)(3), paragraph (b)(4), paragraph (b)(6), adding paragraph (b)(7), removing paragraphs (c) and (d), and redesignating paragraphs (e), (f), (g), (i) and (j) as paragraphs (c), (d), (e), (f), (g) and (h), respectively, to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those

stations authorized pursuant to paragraph (g) of this section, will be afforded protection solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions:

(1) Except as indicated in paragraph (b)(4) of this section, no station shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

(2) The separation between co-channel stations that have been granted exclusivity and that are located at high sites in California north of 35° N Latitude and west of 118° W Longitude shall be determined as follows:

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations that have been granted channel exclusivity and are located in the State of Washington at the following locations shall be separated from co-channel stations by a minimum of 169 km (105 mi). * * *

(4) Upon an applicant's specific request to the Commission or a frequency coordinator, co-channel stations may be separated by less than 113 km (70 mi) by meeting certain transmitter ERP and antenna height criteria. The following Table indicates separations assignable to such co-channel stations for various transmitter power and antenna height combinations. The minimum separation permitted is 88 km (55 mi). Applicants will provide the Commission with a statement that the application is submitted for consideration under the Table, a list of all co-channel stations within 113 km (70 mi), and the DHAATs and ERPs for these stations and the applicant's proposed station. Applicants seeking to be licensed for stations located at distances less than those prescribed in the Table are required to secure a waiver and must submit with the application, in addition to the above, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel stations would receive the same or greater interference protection than provided in the Table. Requests for separations less than 88 km (55 mi) must also include an analysis of interference potential from mobile transmitters to existing co-channel base station receivers. Applicants seeking a waiver must submit with their application a certificate of service indicating that concurrent with the submission of the application to the Commission or a coordinator, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Licensees thus served may file an opposition to the application within 30 days from the date the application is filed with the Commission.

(i) The directional height of the antenna above average terrain (DHAAT) is calculated from the average of the antenna heights above average terrain from 3 to 16 km (2 to 10 mi) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

(ii) Except for the sites listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section, additional co-channel distance separation must be afforded to an existing station from an applicant wishing to locate a station less than 113 km (70 mi) from a co-channel station, where either the applicant's or the existing station is located at sites with DHAATs of 458 m (1500 ft) and above. The separation between short-spaced co-channel stations shall be determined as follows:

(A) Calculate the DHAAT in each direction between every existing co-channel station with 113 km (70 mi) and the proposed station.

(B) In the Table, locate the approximate ERP and DHAAT values for the proposed and existing stations.

(C) When DHAAT values are greater than 458 m (1500 ft), use the required separation for 305 m (1000 ft) and add 1.6 km (1 mi) for every 30.5 km (100 ft), or increment thereof, of DHAAT above 458 m (1500 ft) to the distance indicated in the Table. If both the proposed existing stations have DHAATs of 458 m (1500 ft) or more, the additional distance is separately determined for each station and the combined distance is added to the distance obtained from the Table. Protection to existing stations will be afforded only up to 113 km (70 mi).

SHORT-SPACING SEPARATION TABLE

Proposed station ERP (watts)/DHAAT(m) [3]	Distance between stations (km) [1 2]						
	Existing station DHAAT (meters) [3]						
	305	215	150	108	75	54	37
1000/305	113	113	113	113	113	113	113
1000/215	113	113	113	113	113	113	110
1000/150	113	113	113	113	112	108	103
1000/108	113	113	113	110	107	103	98
1000/75	113	112	108	103	100	96	91
1000/54	113	109	105	100	97	93	88
1000/37	109	104	100	95	92	88	88
500/305	113	113	113	113	113	113	110
500/215	113	113	113	112	109	105	100
500/150	113	112	108	103	100	96	91
500/108	112	107	103	98	95	91	88
500/75	107	102	98	93	90	88	88
500/54	103	98	94	89	88	88	88
500/37	99	94	90	88	88	88	88
250/305	113	113	113	112	109	105	100
250/215	113	113	107	102	99	95	90
250/150	109	104	100	95	92	88	88
250/108	105	100	96	91	88	88	88
250/75	99	94	90	88	88	88	88
250/54	95	90	88	88	88	88	88
250/37	91	88	88	88	88	88	88
125/305	113	111	107	102	99	95	90

SHORT-SPACING SEPARATION TABLE—Continued

Proposed station ERP (watts)/DHAAT(m) [3]	Distance between stations (km) [1 2]						
	Existing station DHAAT (meters) [3]						
	305	215	150	108	75	54	37
125/215	108	103	99	94	91	88	88
125/150	103	98	94	89	88	88	88
125/108	98	93	89	88	88	88	88
125/75	93	88	88	88	88	88	88
125/54	88	88	88	88	88	88	88
125/37	88	88	88	88	88	88	88
62/305	108	103	99	94	91	88	88
62/215	103	98	94	89	88	88	88
62/150	97	92	88	88	88	88	88
62/108	92	88	88	88	88	88	88
62/75	88	88	88	88	88	88	88
62/54	88	88	88	88	88	88	88
62/37	88	88	88	88	88	88	88

[1] Separations for stations on Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson (CA) and the locations in the State of Washington listed in paragraph (b)(3) of this section are 56 km (35 mi) greater than those listed in the Table above. In the event of conflict between this Table and the table of additional California high elevation sites shown in paragraph (b)(2) of this section, the latter will apply.

[2] Distances shown are derived from the R-6602 curves and are based upon a non-overlap of the 22 dBu (F50,10) interference contour of the proposed station with the 40 dBu (F50,50) contour of the existing station(s). No consideration is given to the 40 dBu service contour of the proposed station and the 22 dBu contour of the existing station(s). The minimum separation of stations will be 88 km (55 mi).

[3] All existing stations are assumed to operate with 1000 watts ERP. When the ERP and/or DHAAT of a proposed station or the DHAAT of an existing station is not indicated in the Table, the next higher value(s) must be used.

* * * * *

(6) A station located closer than the distances provided in this section to a co-channel station that was authorized as short-spaced under paragraph (b)(4) of this section shall be permitted to modify its facilities as long as the station does not extend its 22 dBu contour beyond its maximum 22 dBu contour (i.e., the 22 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station.

(7) Offset frequencies in the 811–821/856–866 MHz band for use only within U.S./Mexico border area, as designated in § 90.619(a), shall be considered co-channel with non-offset frequencies in this band as designated in § 90.613. New applications for frequencies in this band for stations adjacent to the U.S./Mexico border area must comply with the co-channel separation provisions of this section.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25261 Filed 10–14–93; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 29)]

Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups[1]

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is exempting from regulation the rail transportation of 17 commodities. These commodities are added to the list of exempt commodities as set forth below. The intended effect is to increase competition with other modes of transport and to avoid the costs associated with tariff and contract rate administration.

EFFECTIVE DATE: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927–5293 or Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

On February 11, 1993, at 58 FR 8030, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of 29 classes of commodities. The comments have been received and analyzed. Here, we are approving AAR's proposal in part, for the 17 classes of commodities listed below.

14–1 Dimension stone, quarry
14–2 Crushed or broken stone or riprap
14–411 Sand
14–412 Gravel
20–131 Lard
20–139 Meat products
24–1 Primary forest or wood raw materials
24–4 Wooden containers
26–613 Wallboard
29–914 Coke produced from coal
29–915 Distillate or residual fuel oil from coal
32–952–15 Cinders, clay, shale, slate
33–11 Blast furnace products
33–12 Primary iron or steel
33–2 Iron or steel castings
33–3 Nonferrous metal primary smelter products
35–31 Construction machinery or equipment

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a

[1] Originally entitled Rail General Exemption Authority—Petition of Association of American Railroads To Exempt Rail Transportation of 31 Selected Commodity Groups.

substantial economic impact on a significant number of small entities. There is additional support for this finding in our limitation of the exemption to commodities where shippers raised no allegation of potential for abuse of market power.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: September 17, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, the chart in paragraph (a) is revised to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
14 1 ..	6001–T, eff. 1–1–92.	Dimension stone, quarry.
14 2 ..	.....do	Crushed or broken stone or riprap.
14 411	.....do	Sand (aggregate or ballast).
14 412	.....do	Gravel (aggregate or ballast).
20	.....do	Food or kindred products except 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil, crude or refined. 20 914 Cottonseed cake or meal or by-products. 20 92 Soybean oil or by-products. 20 93 Nut or vegetable oils or by-products.
22	.....do	Textile mill products.
23	.....do	Apparel or other finished textile products or knit apparel.
24	.....do	Lumber or wood products.
25	.....do	Furniture or fixtures.
26	.....do	Pulp, paper or allied products except 26 1 Pulp or pulp mill products. 26 211 Newsprint. 26 212 Ground wood paper, uncoated. 26 213 Printing paper, coated or uncoated, etc. 26 214 Wrapping paper, wrappers or coarse paper. 26 218 Sanitary tissue stock. 26 471 Sanitary tissues or health products. 26 6 Building paper or building board except 26 613 Wallboard.
27	.....do	Printed matter.
28 195 22–23.	.....do	Iron chloride, liquid.
28 195 27–30.	.....do	Iron sulphate.
28 195 68–69.	.....do	Ferrous sulphate.
29 914	.....do	Coke produced from coal.
29 915	.....do	Distillate or residual fuel oil from coal refining.
30	.....do	Rubber or miscellaneous plastics products except 30 111 Rubber pneumatic tires or parts.
31	.....do	Leather or leather products.
32	.....do	Clay, concrete, glass or stone products except 32 411 Hydraulic cement, natural, portland or masonry. 32 741 Lime or lime plaster. 32 95 Nonmetallic earths or minerals, ground or treated in any other manner except 32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite.
33	.....do	Primary metal products, including galvanized.
34	.....do	Fabricated metal products except 34 6 Metal stampings. 34 919 40 Radioactive material shipping containers, etc.
35	.....do	Machinery except 35 11 Steam engines, turbines, turbine generator sets, or parts. 35 85 Refrigerators or refrigeration machinery or complete air-conditioning units.
36	.....do	Electrical machinery, equipment or supplies except 36 12 Power, distribution or specialty transformers. 36 21 Motors or generators.
37 11	.....do	Motor vehicles.
37 14	.....do	Motor vehicle parts or accessories.
38	.....do	Instruments, photographic goods, optical goods, watches or clocks.
39	.....do	Miscellaneous products of manufacturing.
41 118	6001–U, eff. 1–1–93.	Used vehicles.

* * * * *

[FR Doc. 93–25341 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 92047–2519]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of quota transfers from the Incidental category and the Reserve to the General category.

SUMMARY: NMFS announces that it is taking action to transfer 5 mt from the Incidental (other) subcategory, and 3 mt from the Reserve, to the General category. It has been determined that the fisheries landing bluefin under the Incidental (other) subcategory will not achieve the full 1993 quota allocation. This action is being taken to extend the season for the General category, which will assure additional collection of biological assessment and monitoring data, provide additional fishing opportunities and increase the economic benefits from this fishery. In addition, this action will prevent overharvest of the quota established for this fishery while providing for fishing in an area which has not yet had an

ample opportunity to harvest a fair share of the quota.

EFFECTIVE DATES: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Aaron E. King, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(i), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period of the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer in season any portion of the quota of any fishing category to any other portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following five factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock:

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season;

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA, has the authority to allocate any portion of the reserve amount to any fishing category after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Allocating 3 mt from the reserve to the General category responds to the criteria listed above as follows:

(1) General category landings are a major contributor to the collection of biological data on this fishery;

(2) 1993 General category catches have been high relative to recent years at this date in the season, and it would be necessary to close this category of the fishery within the next few days unless additional quota allocation is made;

(3) The New York Bight area normally has a late season fishery (October), and has averaged 18 mt over the past 3 years, but has taken less than 2 mt so far this year; and

(4) New quota monitoring techniques (e.g., daily faxing of dealer reports) will improve NMFS' ability to keep all categories within assigned quotas.

The two most useful fishing categories for purposes of biological assessment and monitoring of the stock are the Angling category for fish less than 70 inches Total Fork Length (TFL), and the General category for fish 70 inches and greater TFL. These are the only categories that provide Catch Per Unit Effort (CPUE) data for stock assessment purposes. Therefore, these categories have priority for any inseason transfers that become available.

In the case of the General category, under § 285.22(a) the AA may set aside an allocation for an identified area, not to exceed the greater of 20 mt or the maximum reported landings from the identified area in any of the preceding 3 years. This set aside is made when the AA has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations in seasonable distribution, abundance, or migration patterns and the catch rate. This action was taken effective September 24, 1993 (58 FR 50523), for the New York Bight area for a total of 20 mt.

In 1990, the catch in the New York Bight area for fish greater than 70 inches was 30.7 mt, while in 1991 and 1992, the catches were 9 mt and 13.8 mt, respectively. Therefore, over the past three years, the average catch in the New York Bight area was 17.8 mt. Therefore, fishermen in the New York Bight will be precluded from harvesting their average catch unless a set aside is established expressly for this area.

Based on landings reports, the AA had determined that the adjusted quota of Atlantic bluefin tuna allocated for the General category, minus a 20-mt set aside amount, would be attained by September 23, 1993, and therefore closed the area north of Long Island, New York (58 FR 50523). The intent of this action was to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas that had not yet had an ample opportunity to harvest a fair share of the quota. Subsequent to the closure of areas north of Long Island, more complete accounting of dealer reports indicated that the General category had already taken approximately 601 mt of the 603 mt quota. Therefore, without an inseason transfer it will be necessary to close the General category in the New York Bight in the near future, despite the intent to provide up to 20 mt for this area.

Since 1993 is the second year of the biennial quota, and one of the stated bluefin tuna management objectives is to maximize use of the available ICCAT quota, NMFS believes it is necessary to transfer these portions of the Reserve allocation and Incidental (other) subcategory quota to achieve this objective. The intent of this action is to prevent overharvest of the western Atlantic bluefin tuna catch quota established for this fishery for the 1992-93 biennial period, while providing continued collection of biological data, helping continue traditional late summer and early fall fisheries, maximizing the use of the available resource, and distributing the fishing opportunity and beneficial economic impacts among businesses and users for a longer period of time.

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 8, 1993.

Joe P. Clem,

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

[FR Doc. 93-25300 Filed 10-8-93; 5:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

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 1007, 1093, 1094, 1096, 1099, and 1108

[Docket Nos. AO-366-A36, et al.; DA-93-21]

Milk in the Georgia and Certain Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments To Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice of public hearing on proposed rulemaking.

7 CFR Part	Marketing area	Docket No.
1007	Georgia	AO-366-A36
1093	Alabama-West Florida.	AO-386-A14
1094	New Orleans-Mississippi.	AO-103-A56
1096	Greater Louisiana	AO-257-A43
1108	Central Arkansas	AO-243-A46
1099	Paducah, Kentucky.	AO-183-A45

SUMMARY: On September 10, 1993, a notice of hearing was published in the **Federal Register** (58 FR 47653), advising the public of a hearing to be held in Atlanta, Georgia, on November 1, 1993, to consider proposals that included merging several federal milk orders in the southern United States. Since that time, another proposal has been received to combine the Central Arkansas and Paducah, Kentucky, federal milk orders with territory of the recently terminated Memphis, Tennessee, milk order and with unregulated counties in Tennessee, Arkansas, and Texas to form a new milk order for the "Mid-South marketing area." In view of the relationship of this proposal to the other proposals that have already been noticed for consideration, the hearing notice is being modified to consider this additional proposal.

DATES: The hearing will convene at 1 p.m., November 1, 1993.

ADDRESSES: The hearing will be held at the Holiday Inn—Perimeter Dunwoody, 4386 Chamblee-Dunwoody Road, Atlanta, Georgia 30341. (Telephone: 404/457-6363).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

Notice is hereby given that the public hearing to be held at Atlanta, GA, on November 1, 1993, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Central Arkansas marketing areas (58 FR 47653), will be expanded to consider a proposal to combine the Central Arkansas and Paducah, Kentucky, federal milk orders, together with the territory of the recently-terminated Memphis, Tennessee, milk order and several unregulated counties in Arkansas, Tennessee and Texas. 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 hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) ("the Act"), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, as previously set forth in 58 FR 47653 and as hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

Several of the proposals to be considered would combine the several existing marketing areas under one or more orders, and/or expand an existing

or proposed order. These proposals raise the issue of whether the provisions set forth in those proposals would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and/or expanded marketing areas, and, if not, what modifications of the provisions would be appropriate.

The issues raised by these proposals include whether the declared policy of the Act would tend to be effectuated by:

(a) Merger of one or more of the marketing areas, or any combination of marketing areas and/or expansion of marketing areas, for separate or combined orders which include part or all of the areas presently defined in the respective orders and/or noticed for hearing; and

(b) Adoption of any of the proposed provisions, or appropriate modifications thereof, for any separate order or any combination of such orders including a review of the appropriate pricing and pooling provisions of the orders whether separate or in any combination.

The proposed merger of orders also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds, and any administrative funds accumulated under the existing individual orders.

List of Subjects in 7 CFR Parts 1007, 1093, 1094, 1096, 1099 and 1108

Milk marketing orders.

The authority citation for 7 CFR parts 1007, 1093, 1094, 1096, 1099, and 1108 continues to read as follows:

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

The proposed amendments, as previously set forth in 58 FR 47653 and as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Incorporated: Proposal No. 13.

Merge the marketing areas of the Central Arkansas (Part 1108), Paducah, Kentucky (Part 1099) and recently-terminated Memphis, Tennessee, milk orders with unregulated counties in Arkansas, Texas, and Tennessee to form a "Mid-South marketing area" (Part 1108.2) with terms and conditions patterned after the Central Arkansas order, with the exception of the provisions specified below:

§ 1108.2 Mid-South marketing area.

The Mid-South marketing area, hereinafter called the *marketing area*, means all the territory included within the bounds of the following counties, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (Municipal, State, and/or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1

Kentucky Counties

Ballard, Caldwell, Calloway, Carlisle, Christian, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, Todd, and Trigg.

Missouri Counties

Dunklin, Mississippi, New Madrid, Pemiscot, and Scott.

Zone 2

Arkansas Counties

Baxter, Clay, Cleburne, Fulton, Greene, Independence, Izard, Jackson, Johnston, Lawrence, Newton, Randolph, Searcy, Sharp, Stone, and Van Buren.

Zone 3

Arkansas Counties

Clark, Conway, Craighead, Crittenden, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Mississippi, Monroe, Perry, Phillips, Poinsett, Pope, Prairie, Pulaski, Saline, St. Francis, White, Woodruff, and Yell.

Mississippi Counties

De Soto, Lafayette, Marshall, Panola, Tate, and Tunica.

Tennessee Counties

Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Madison, Obion, Shelby, Tipton, and Weakley.

Zone 4

Arkansas Counties

Arkansas, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Lafayette, Lincoln, Little River, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Sevier, and Union.

Texas Counties

Bowie and Cass.

Proposal No. 14

Amend § 1108.7(c)(2)(i) to read as follows:

§ 1108.7 Pool plant.

* * * * *

(c) * * *

(2) * * *

(i) A distributing plant qualified pursuant to paragraph (a)(1) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

* * * * *

Proposal No. 15

Amend § 1108.52(a) to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (3) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1108.2, the adjustment (cents per hundredweight) shall be as follows:

Zone 1	Minus 38.
Zone 2	Minus 32.
Zone 3	No adjustment.
Zone 4	Plus 31.

(2) For a plant located within the marketing area of another order issued pursuant to the Act, the location adjustment shall be computed in the following manner: subtract the Class I price applicable in Zone 3 of this order from the Class I price applicable at such plant had the plant been regulated under such other order.

(3) For a plant located outside the designated pricing areas specified in paragraphs (a)(1) and (a)(2) of this section, the adjustment shall be minus

2.5 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, based on the shortest hard-surfaced highway distance as determined by the market administrator.

Copies of this notice of hearing may be obtained from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250 or from the following market administrators: Paul W. Halnon, USDA-AMS-Dairy Division, P.O. Box 1208, Norcross, GA 30091–1208; Richard E. Arnold, USDA-AMS-Dairy Division, P.O. Box 701440, Tulsa, OK 74170–1440; or Donald R. Nicholson, USDA-AMS-Dairy Division, P.O. Box 1485, Maryland Heights, MO 63043–0485.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office)
Offices of the Market Administrators for each of the markets included in this notice.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: October 13, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25448 Filed 10–14–93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 1106

[DA-93-28]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of October 1993 through January 1994 the supply plant shipping requirements of the Southwest Plains Federal milk marketing order. The suspension would remove the requirement that supply plants ship 50 percent of their dairy farmer receipts to pool distributing plants during each of the months of October through January. The suspension was requested by Kraft General Foods, which contends that shipments from supply plants will not be required to meet the market's fluid requirements because there are plentiful supplies of milk available directly from producers' farms to meet the needs of the market's pool distributing plants.

DATES: Comments are due no later than October 22, 1993.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: 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 proposed action would not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory burden on small entities by removing the requirement the supply plant operators ship milk to distributing plants when the milk is not needed at such plants.

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

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of October 1993 through January 1994:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), beginning with the words "of February through August and continuing to the end of that paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**.

The comment period is limited to seven days to permit October to be included in the suspension period. Kraft General Foods had proposed that the suspension apply to the months of September 1993 through January 1994, but was informed that it was too late to include September in the suspension period. With an abbreviated comment period, however, it would be possible to include October in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September 1992 through January 1993 to qualify as

a pool plant without shipping any milk to a pool distributing plant during the months of October 1993 through January 1994. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants to qualify as a pool plant during the months of October through January.

In its letter requesting the suspension, Kraft General Foods stated that there were abundant supplies of milk available to distributing plants on a direct-ship basis and that supplemental shipments of milk from more distant supply plants, such as its Bentonville, Arkansas, plant, were unnecessary to meet the fluid needs of the market.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

Dated: October 7, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–25294 Filed 10–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 1124 and 1135

[Doc. at Nos. AO–368–A21, AO–380–A11; DA–92–07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreements and To Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends the adoption of a proposal for pricing milk on the basis of nonfat solids and protein, in addition to butterfat, for the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing orders, respectively. In addition, it recommends reducing the supply plant shipping percentage for the Pacific Northwest order and modifying the producer-handler regulation to permit a State institution with outside distribution to purchase an average of 1,000 pounds of milk per day from pool plants. The decision recommends the denial of a proposal to change location adjustments in Yakima County, Washington.

DATES: Comments are due on or before November 1, 1993.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

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

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

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 would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued July 31, 1992; published August 6, 1992 (57 FR 34694).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Pacific Northwest (Order 1124) and Southwestern Idaho-Eastern Oregon (Order 1135) marketing areas. This notice is issued pursuant to the provisions of the Act 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 decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 15th day after publication of this decision in the **Federal Register**. Four 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 set forth below are based on the record of a public hearing held at Portland, Oregon, on September 9 and 10, 1992, pursuant to a notice of hearing issued July 31, 1992 and published August 6, 1992 (57 FR 34694).

The material issues on the record of hearing relate to:

1. Multiple component pricing of milk under both orders.
2. Performance standards for supply plants under the Pacific Northwest order.
3. Status of a milk plant operated by a state institution under the Pacific Northwest order.
4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

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. Multiple Component Pricing of Milk Under the Pacific Northwest and Southwestern Idaho-Eastern Oregon Orders

The Pacific Northwest and Southwestern Idaho-Eastern Oregon orders should be amended to provide for multiple component pricing of Class II and Class III (including Class III–A) milk to handlers and for establishing minimum pay prices to producers. Under the Pacific Northwest order, the components to be priced will be nonfat

milk solids and butterfat. Under the Southwestern Idaho-Eastern Oregon order, the components to be priced will be protein and butterfat.

Multiple component pricing for both orders was proposed by Darigold Farms, and Western Dairymen Cooperative, Inc., joined as a co-proponent for the Southwestern Idaho-Eastern Oregon proposal. The basic thrust of the proposal was that it was time to change the way milk is priced under both orders such that the pricing system would send a clear economic signal to producers as to which milk components are in the greatest demand and which ones have the greatest economic value in the marketplace.

Two witnesses testified on behalf of Darigold. One witness testified extensively on the general concept of multiple component pricing. He stated that the current pricing system, which is based on the value of butterfat and skim milk, does not reflect changes that have occurred over time in the value of certain milk components. In his view, the current system is based on market conditions that prevailed more than 50 years ago. The current system, in his opinion, simply encourages producers to increase the volume of skim milk produced without regard to the content of such milk.

The Darigold witness indicated that under the current pricing system, given the current levels of milk prices and fat differentials, one pound of protein, lactose, other solids, or even milk water is now valued at somewhere between nine and ten cents per pound. Thus, the price of one pound of butterfat is about equal to the value attributed to one gallon of milk water. He also indicated that one pound of butterfat is said to be worth seven to eight times as much as one pound of milk protein, even though that appears to be unreasonable. He maintained that these unrealistic price comparisons are nonetheless actual measurements of the incentives that dairymen are expected to respond to under present regulations when they plan their breeding and production activities. He further indicated his strong belief that the present system stands in the way of achieving optimum efficiency. Thus, he urged the adoption of multiple component pricing wherein the marketplace values of various milk components will be reflected in pricing milk to handlers and to producers. In this way, consumers' demands and preferences for milk and other dairy products can be translated into real signals that indicate to producers the milk components consumers want and are willing to pay for.

A second witness spoke on behalf of Darigold Farms, Western Dairymen Cooperative, Inc., Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, Tillamook County Creamery Association, and Magic Valley Quality Milk Producers, Inc. He indicated that in July 1991 these cooperatives represented 88 percent of the producers for the Pacific Northwest market (Order 124) and 84 percent of producers for the Southwestern Idaho-Eastern Oregon market (Order 135). This witness discussed how the proposed multiple component pricing (MCP) system would work, why it should be adopted, and the form it should take for these two markets. He stated that in order for a MCP program to work well it needed to be mandatory under the Federal order. Currently, just over 90 percent of the producers for Order 124 and just over 88 percent of the producers for Order 135 are eligible to receive some component pricing premium. He further stated that the premium programs result from inadequacies inherent in the current butterfat and skim pricing programs.

The witness indicated that another reason why MCP is needed is because of increasing interest by consumers in their diet, especially noting concerns about cholesterol and fat levels in dairy products. He said that consumers now prefer milk products with lower fat content. He went on to say that over the years there has been a general emphasis on the value of fat, but that so far there has been only a general offset of this as values of the nonfat fluid portion of milk, which is largely water, have increased. He stated that the values of specific nonfat components should be recognized and increased so that consumer preferences could be more directly translated into indicating the milk components that dairy farmers should be producing for the market. MCP would achieve this and at the same time promote more orderly marketing for both producers and handlers, according to Darigold's spokesman.

Darigold's witness stated that MCP would contribute to orderly marketing by providing more equity among plants making Class II and Class III products because their raw milk costs would be more uniform. Also, marketing organizations would have more options in marketing individual loads of milk. He explained that plants would be less reluctant to receive a low-testing load of milk because they would pay only for the components received rather than for water that must be removed from the milk. He said that, in turn, producers in effect will have more options in choosing marketing organizations or plants to take their milk.

The witness also pointed to the changing relationship over time between the values of the butterfat and skim portions of milk. For example, he noted that during the 1960's butterfat accounted for about 75 percent of the total value of milk, while the skim value was only about 25 percent. Currently, over 70 percent of the total value of milk is associated with the skim component because over time the value of butterfat has declined and the Commodity Credit Corporation has changed the support prices of butter and nonfat dry milk. He expected that the trend to lower fat values will continue.

The proposed MCP program was modeled after the one now in effect in the Great Basin Federal milk order. It was chosen because it would maintain the current Class I price structure, while applying MCP to Class II and Class III uses of milk where there is a direct relationship between the component content of raw milk and its yield of manufactured milk products.

Because the principal product manufactured from milk not needed for Class I or Class II uses in the Order 124 market is nonfat dry milk, the proponents proposed that the MCP program for that market should be based on butterfat and nonfat milk solids. On the other hand, in the Order 135 market the principal use for surplus milk is in hard cheeses. For that reason, the proponents proposed that the MCP program for that order should be based on butterfat and protein.

As proposed, MCP would not apply to Class I milk, which would continue to be priced to handlers as it now is. Handlers would account for the components (butterfat and nonfat milk solids or protein) used in Class II and Class III at prices per pound as specified in the order. Each producer would be paid a weighted average of the Class I and Class II differentials, plus the value per pound for the components in the producer's milk.

Butterfat would be priced on a per-pound basis. The butterfat price, as proposed, would be the sum of the skim milk value (based on the basic formula price) divided by 100 plus the butterfat differential for the month multiplied by 10.

The prices per pound for nonfat solids or protein, as the case may be, would be determined by subtracting from the basic formula price the value of the butterfat, and dividing the remainder by the market average test for nonfat milk solids or protein in producer milk for the current month.

There were three proposed modifications for determining the value of the components other than butterfat. One, advocated by a spokesman for Kraft General Foods, would use the average component values (tests) of the milk included in the survey of pay prices that make up the Minnesota-Wisconsin (M–W) estimated price for manufacturing grade milk. The M–W price is the basic formula price for the orders. According to the Kraft witness, use of the M–W milk component tests would provide uniformity of component prices among orders, whereas using market average tests could result in component prices that were not uniform among orders. Darigold's witness indicated that Darigold would accept this approach.

A second modification was advanced by the witness for Northwest Independent Milk Producers (NWI). As proposed, the Class III milk price would be a formula price based on the prices for 40-pound blocks of cheddar cheese, plus a value for whey cream, minus the make allowance used by the Commodity Credit Corporation. The proponent claimed that the current Class III price (the M–W price) may be reflective of cheese production and manufacturing in Minnesota and Wisconsin, but is totally out of sync. with the real market situation in the Pacific Northwest region. The proposed Class III price is needed to improve the competitive relationship between cheesemakers in the Northwest and those in California, according to the proponent.

NWI also proposed that the basic formula price provision should be amended by adding the words "or $12.10 per hundredweight, whichever is higher for the month." In the view of NWI's witness, this proposal would decouple Class I prices from the radical price fluctuations that have occurred.

A witness for Swiss Village Cheese, a proprietary bulk tank handler under Order 135, supported MCP for that market. The witness stated that the failure to recognize varying protein tests for raw milk produces a great inequity in the Federal milk order pricing system and sends the wrong economic message to producers. He noted that the August 1992 M–W price of $12.54 per hundredweight yields a skim milk price of $10.09 with a seven cents butterfat differential. The $10.09 figure is the same, regardless of the protein content of the milk.

This being the case, he said, the value of a pound of protein thus varies as the test varies. If milk tests 4 percent protein, dividing the $10.09 by 4 yields a value per pound of $2.52. However, if the test is only 3 percent, the per-pound value is $3.36, or a difference of 84 cents. Thus, when a cheese plant wants the lowest-priced protein, it would want to attract the highest testing milk. In order to attract high-testing milk, cheese plant operators pay producers protein premiums or base their price on a cheese yield formula. He stressed that plants can pay a premium over the Federal order price, but cannot lower the price to a producer below the minimum Federal order price based on butterfat content. In his view, this causes handlers or cheese plants to play a price averaging game, which results in producers of low-testing milk getting paid more than their milk is worth, while producers of high-testing milk are paid less than their milk is worth. Adoption of multiple component pricing would correct this situation and provide a basis for making economically correct decisions at both the dairy farm and the plant, he concluded.

The Swiss Village Cheese representative presented what he believes are important factors regarding the future of the dairy industry in Idaho, and in the West in general. He indicated that: (1) Herd size will be large; (2) production per cow will be high; (3) total milk production increases will exceed population increases; (4) nearly all of the increased production will be used to make cheese; and (5) most of this "new" cheese will be sold to consumers in the East. In view of these factors/the witness proposed modifications to the MCP plan proposed for Order 135.

The first proposed modification would use the protein test for milk that is included in estimating the M–W price. The second modification proposes adjusting the M–W price for a transportation differential (minus 10 cents) prior to determining the protein price. This proposal is based on the belief that the market for additional quantities of cheese produced in Idaho will be population centers in the eastern United States. Therefore, a price adjustment is warranted, in the view of this witness, because the cheese produced in Idaho will have to be moved long distances to find customers, and a lower price would help Idaho cheese plants be more competitive with California cheese plants.

A third proposed modification by the Swiss Village Cheese witness called for giving milk buyers the right to reduce a producer's payment if the producer's milk had a high somatic cell count. He testified that cheese yields and cheese quality both suffer when raw milk has somatic cell counts above 300,000 per milliliter. The money deducted from payments for milk with a high somatic cell count would be returned to other producers in the pool whose milk had lower somatic cell counts.

A witness for Avonmore West, a handler under Order 135, testified in support of MCP and urged also that if MCP is adopted, the pricing must recognize the relationship of somatic cells to the true value of protein in the milk. The witness cited the Recommended Decision (57 FR 36536) to adopt MCP in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. The Recommended Decision in that proceeding adopted MCP for the three orders and included adjustments for somatic cells both in prices paid to producers and in prices paid by handlers. He urged USDA to follow its own lead and adopt adjustments for somatic cells based on the evidence presented at this hearing and the Recommended Decision for the three orders noted above. He contended that if MCP is adopted for Orders 124 and 135 without adjustments for somatic cells, producers with a low somatic cell count in their milk will be subsidizing producers with high somatic cell counts in their milk.

The only brief filed on this issue was filed jointly by Darigold, Farmers Cooperative Creamery, and Northwest Independent Milk Producers Association. The brief supported adoption of MCP for both orders and recapped the alternative proposals made at the hearing. The brief concluded that the preferred basis of determining component values (other than butterfat) would be as proposed by NWI, i.e., the Class III price would be based on the Green Bay National Cheese Exchange price. This approach was preferred but the brief also indicated that either the original proposal or the proposal to use the average M–W component tests as the divisor of the skim value to get the per-pound prices for protein or solids nonfat would be acceptable. However, the brief expresses the view that a somatic cell adjustor for paying producers should not be adopted on the basis of the record in this proceeding.

The orders should be amended to provide Class II and Class III milk prices to handlers and payments to producers based on multiple component values. This concept is widely supported and is justified by evidence contained in the hearing record.

MCP should be adopted as a step towards improving the way the Federal order translates market values for dairy products into milk prices that indicate to producers how these products are valued in the marketplace.

As the record indicates, the current pricing system has, over time, placed a

greater share of milk value on the skim portion of milk, and a lesser value on the butterfat portion. Nevertheless, a further recognition of market value as it relates to the value of milk components can be achieved by converting the skim milk value into components, either protein or solids nonfat, on a per-pound basis. As the testimony indicates, it is not sound pricing practice to consider that all skim milk has the same value, regardless of its level of protein or solids nonfat content. The varying values for the components in skim milk can be more properly reflected in handler prices for Class II and Class III milk, and prices to individual producers, if MCP is incorporated into the order. Moreover, incorporating MCP into the orders will tend to insure at least a minimum value of the components for all handlers and producers. This element may be lacking where there are varying premium plans in use in the market, and where perhaps not all producers are involved. Also, providing for MCP in the Federal orders will allow handlers to pay lower prices to producers whose milk tests low for the component other than butterfat. Thus, pricing equity among producers and handlers should be enhanced by adoption of MCP.

Another reason for adopting MCP is that, as a pricing system, MCP will improve how well the pricing system in the orders translates consumer preferences into economic signals that indicate to dairy farmers exactly what consumers want. Data presented at the hearing show clearly that, over time, consumers prefer milk products with less fat. Adopting MCP for Orders 124 and 135 will facilitate sending clear signals to producers that consumers want less fat and more protein or solids nonfat in their dairy products.

Clearly, the vast majority of the milk pooled in these two markets is used for Class II and Class III uses. In the Pacific Northwest market, almost two-thirds of the milk pooled annually in 1989, 1990, and 1991 was classified in Classes II and III combined; and the percentage is increasing, going from 62.51 for 1989 to 64.47 percent for 1991. In the Southwestern Idaho-Eastern Oregon market, over 80 percent of the total milk pooled in the years 1989 through 1991 was used in Class II and Class III products.

As proposed, MCP for Order 124 will utilize a solids nonfat component and MCP for Order 135 will utilize a protein component. Not only will such pricing plans recognize that these markets utilize most of their milk in Class II and Class III uses, they also will recognize the particular principal dominant product manufactured from surplus milk supplied in each market. Moreover, the use of protein as the second component in Order 135 will make the provisions of that order more compatible with provisions of the neighboring Great Basin Order.

The proponents indicated that at the time of the hearing 59 percent of the Class II and Class III milk pooled under the Pacific Northwest order was being made into nonfat dry milk and 26 percent into cheese. Thus, the use of solids nonfat is appropriate since the majority of manufactured milk is oriented more toward the products and uses in which all the solids nonfat are consumed together.

On the other hand, in the Southwestern Idaho-Eastern Oregon market, nearly 80 percent of the milk is made into cheese, in which protein is an important component. Thus, the use of butterfat and protein for MCP is appropriate for Order 135.

Under the plan adopted herein, the price for a pound of butterfat will be the same for both orders, i.e, the sum of the skim milk price divided by 100 and the butterfat differential multiplied by 10. Since each producer will receive payment for the milkfat on a price-per-pound basis, there will no longer be a need for a producer butterfat differential in either order. Thus, the proposed order language does not contain a provision for a "producer butterfat differential."

The prices per pound for solids nonfat and protein should be based on the basic formula price (i.e., the M–W price). For each component, the skim milk value will be determined by subtracting from the M–W price the butterfat price multiplied by 3.5, and dividing the result by the average percent of solids nonfat or protein (as appropriate) for the month in the milk upon which the M–W price is based, as announced by the Dairy Division. Use of the average tests for the components (other than butterfat) in the M–W milk will be consistent with such a provision recently adopted for the Great Basin, Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana markets. This approach was suggested by several people and was supported in briefs. No one specifically opposed it.

There are two related issues that also should be addressed in connection with determining component prices. First, we should point out that the solids nonfat content of producer milk in the Pacific Northwest market may be higher than the solids nonfat content of the milk that is the basis for the M–W price, based on limited information in the record. For example, Exhibit Number 7, Table 1, shows that Darigold Farms' solids nonfat tests averaged 8.69 percent for the months of January through July 1992. On a monthly basis, the Darigold tests were from .04 to .19 higher than the M–W milk solids nonfat content for the same period. Also, page two of Exhibit 10–B shows that NWI's solids nonfat tests averaged 9.10 percent during January through July 1992. Each of the monthly tests of NWI's milk was more than .5 above the nonfat solids content of the M–W milk. The average percent solids nonfat tests of producer milk included in the M–W "Base Month" Price Series during January through July 1992 were: January, 8.55; February, 8.52; March, 8.55; April, 8.57; May, 8.56; June, 8.56; and July 8.53. Official notice is taken of page 2 of Dairy Market News, Volume 59, Report 46, dated November 13, 1992, issued by the Department of Agriculture, Agricultural Marketing Service, Dairy Division, P.O. Box 8911, Madison, Wisconsin 53708–8911.

The record does not contain data showing the average solids nonfat content of all producer milk for the Pacific Northwest market. Thus, the comparisons made above are not conclusive. However, if the comparison reflects the actual market situation, the price for a pound of solids nonfat would be higher if the M–W test is used as a divisor in the proposed formula for calculating the price than if the market average test is used. As a result, the value of Class II and Class III milk in the pool would increase from current levels.

A second related issue that must be kept in mind is that USDA has already conducted a hearing to consider proposed alternatives to the M–W price as the basic formula price for all the orders. If the Secretary decides to replace the M–W price with some other factor or factors to establish the basic formula price, a question may arise as to what tests for solids nonfat or protein should then be used. Absent any knowledge at this time as to the outcome of that proceeding, it would seem appropriate to continue to use the tests prescribed in this decision. Later, it may be necessary to consider amending the orders in this regard.

NWI's proposal to put a $12.10 per hundredweight floor under the basic formula price is not adopted. The principal purpose of this proposal relates to Class I milk prices. However, Class I milk prices are not an issue in this proceeding.

Several other proposed modifications to the initial proposal on component prices were offered at the hearing. However, none of these modifications should be adopted.

One of the modifications would provide a location adjustment to the basic formula price for Order 135 because additional milk supplies likely would be made into cheese that would have to be transported elsewhere to be sold. Another reason advanced is because a lower price would improve competition with cheese made from milk priced under the California State milk order, which has a lower price.

This proposed modification should not be adopted. The purpose of the basic formula is to move prices for milk in most uses in all Federal order markets. It should not be modified for the purpose of accommodating expected sales competition for one product under one order.

Similarly, the Class III cheese formula price modification advanced by NWI and endorsed by Darigold in its brief also must be denied. With the exception of consideration of a lower price for milk used to make nonfat dry milk (Class III–A), it has long been the policy of USDA that the lowest-priced class of use under the Federal order program is based on the concept of a national market for products (butter, powder, and cheese) made from milk not needed for Class I use. Those products made from Grade A milk marketed under Federal orders compete with products made from non-grade A milk. Since these products compete in a national market, there has been a common surplus class price in almost all Federal orders for many years. (However, in a few orders, including the Pacific Northwest order, there was a butter-powder snubber price applicable to milk used in the production of Class III products.) We believe that this policy of uniformly pricing surplus milk should be continued, at least for the present.

There are other considerations as well. As noted earlier, a hearing has already been held on a replacement or an alternative to the M–W price for the basic formula price under the orders. Also, a proceeding is underway on Class III–A price proposals for many of the orders. A separate Class III–A price for skim milk used to produce nonfat dry milk is now in effect in the Pacific Northwest order on an interim basis. There appears to be a question about whether a separate Class III–A price could be justified if the proposed price to be derived from the cheese exchange prices were adopted as a basic formula price. The record in this proceeding is not adequate to deal with this question.

Also, there appears to be a dilemma in the difference between handler prices for milk to make cheese prescribed under the Federal orders and those provided under the California milk pricing program. However, we do not feel the proper approach to this problem is to lower the surplus milk price to handlers under one particular order.

Another reason not to adopt the NWI proposal is that it is a product formula price based on cheese, yet the principal use of surplus milk in the Pacific Northwest order is nonfat dry milk. The record simply contains no explanation as to why a proposal for multiple component pricing in this market situation should have the component values based on a price derived from the cheese market only.

Finally, on the basis of the record in this proceeding there should be no adjustments to prices under Order 135 based on the level of somatic cells present in the market's raw milk supply. While the record evidence indicates that somatic cell levels are important, the record lacks sufficient evidence to develop appropriate provisions to implement a price adjustment based on somatic cell levels.

In should also be noted that the brief filed on behalf of Darigold, NWI, and Farmers Cooperative Creamery also concluded that "there is insufficient evidence to warrant adopting an 'SCC Adjuster' in either Order 124 or Order 135." Finally, we would point out that some proponents expressed a desire to keep the MCP provisions in Order 135 compatible with those in the Great Basin order. Since the Great Basin MCP provisions do not include a somatic cell adjustor, it would be contrary to compatibility to include such an adjustor in Order 135.

Incorporation of component pricing in Orders 124 and 135 will necessitate amending provisions of the orders dealing with handler reports, class (and component) prices, the computation of handler's obligations and payments to the producer-settlement fund, and the determination of payments to producers.

For purposes of allocating nonfat milk solids and protein, it is assumed that both components remain evenly distributed within the skim milk portion of milk receipts. This assumption will allow the proration of nonfat solids and protein to skim milk for purposes of determining shrinkage and allocating receipts to utilization.

In addition to the information that is already reported each month to the Market Administrator, each handler under Order 124 will be required to report the average nonfat solids content of milk received from each producer during the month, the amount of nonfat solids in the handler's other receipts, except receipts of other source milk, and the nonfat solids contained in bulk transfers of milk and cream to other handlers. Partially regulated distributing plant operators will not be required to report information regarding the nonfat solids of their milk receipts unless they elect to have their obligations calculated under the provision that would determine obligations on the same basis as those of fully regulated handlers. Handlers under Order 135 will have to report the protein content of their milk receipts in a similar fashion as that described above.

The amended orders will contain definitions for a skim milk price, a butterfat price, a nonfat dry milk price for Order 124, a milk protein price for Order 135, and the usual class and producer prices. The "skim milk price" will be used to determine the value of the skim milk portion of producer milk that is allocated to Class I. Value adjustments for determining payments by handlers for milk used in Class II and Class III, and to producers, will be made by prices per pound for the butterfat and nonfat dry milk (for Order 124) or protein (for Order 135) contained in the milk. The skim milk price, the butterfat price, the nonfat milk solids price, and the milk protein price will be derived from the Class III price and the butterfat differential.

Payments to producers for deliveries of milk will be determined through the operation of two marketwide pools for each order. Both orders will contain a "differential pool" which will be used to determine producers' share of the Class I and II market. A second pool—the "skim milk nonfat milk solids pool" in the case of Order 124 and the "skim milk protein pool" for Order 135—will be used to determine the price to be paid producers for the nonfat solids or protein in their milk.

Each handler's net obligation to the pool (i.e., the handler's payment to the producer-settlement fund) will be determined by subtracting the differential and nonfat solids (or protein) values due to the handler's producers from the differential and nonfat solids (or protein) values of the producers' milk used by the handler. The value of butterfat in each producer's milk will not be pooled, but will be paid directly to the producer.

The differential value of each handler's receipts of producer milk assigned to Class I and Class II will be calculated by multiplying the hundredweights of producer milk allocated to these classes by the difference between the respective class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that currently are

included in determining a handler's obligation would be included in the differential value. The adjustments include the values of overage, beginning Class III inventory allocated to a higher class, other source and filled milk receipts allocated to Class I, certain receipts from unregulated supply plants that are allocated to Class I, and receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use. Each handler's differential value will be combined and then divided by the hundredweight of producer milk in the differential pool to determine the "weighted average differential price." An "estimated uniform price" can be derived by adding the weighted average differential price to the basic formula price for the month. Although the uniform price would not be applicable to producers under the component pricing plan, it is of value for price comparison purposes with other Federal orders.

Each handler's skim milk-nonfat milk solids value for Order 124 and skim milk-protein value for Order 135 will be determined by combining the skim milk value of the handler's producer milk in Class I with the nonfat solids value (or milk protein value) of the handler's milk in Class II and III. The skim milk value will be determined by multiplying the skim milk in producer milk assigned to Class I by the skim milk price. The nonfat milk solids (or protein) value will be determined by multiplying the nonfat milk solids (or protein) in producer milk assigned to Class II and III by the nonfat milk solids price (or the milk protein price). The amount of nonfat solids or protein in each class will be determined by multiplying the skim milk portion of producer milk allocated to each class by the nonfat solids (or protein) content of all of the handler's producer milk. The price to be paid to producers for the nonfat solids (or protein) in their milk will be determined by combining the individual handler values of skim milk in Class I milk and nonfat solids (or protein) in Class II and III milk, and dividing the resulting total by the pounds of nonfat solids (or protein) in all producer milk. The resulting price will be the "producer nonfat milk solids price" (or the "producer milk protein price").

As a result of the order amendments described, payments to producers will be based on three factors: (1) The weighted average differential price for all of their milk; (2) the nonfat milk solids or protein contained in their milk multiplied by the respective producer nonfat milk solids price or producer protein price; and (3) the butterfat in their milk multiplied by the butterfat price.

Adoption of multiple component pricing plans requires amending provisions of the orders dealing with handler reports, shrinkage, computation of class and component prices, the computation of a handler's obligation to the pool, computation of a weighted average differential price, and the computation of a producer nonfat milk solids price for Order 124 and a producer protein price for Order 135. These changes have already been discussed.

Several conforming changes must be made in the order language of both orders to implement component pricing. Other minor changes, though not strictly of a conforming nature, have been made to clarify and improve order language.

Other sections of the orders, however, have been changed to accommodate reference changes, date changes, and minor terminology changes resulting from component pricing. These changes require some explanation here.

Section 19 ("product prices") of both orders has been modified to accommodate reference changes, eliminate unnecessary language, and to include the butterfat differential that previously was described in section 74 of both orders. The latter change was made because the description of the butterfat differential fits better with the product prices which are used to compute the butterfat differential and because of the diminished importance of the butterfat differential under a component pricing system. This change also eliminates redundant language that was included in both sections. As a result of making this change, several sections following section 74 (i.e., §§ 1124.75–1124.78 and §§ 1135.75–1135.79) had to be redesignated to close the gap created and several reference changes had to be made as a result.

Sections 30 and 31 of both orders were modified to accommodate the reporting of nonfat milk solids in Order 124 and protein content in Order 135. In addition, under Order 135 the date for filing reports of receipts and utilization was changed from the 7th day to the 9th day after the end of the month, and the date for filing payroll reports was changed from the 20th to the 22nd day after the end of each month. In support of these changes, the spokesman for Darigold Farms testified that the present reporting date for the report of receipts and utilization leaves no time to review the report, investigate apparent errors, or make corrections. He also stated that the modified reporting dates will correspond to those of the Pacific Northwest order. There was no opposition to these proposals.

The "other reports" section of Order 124 was modified to improve the language of that section. There was no intention to substantively change the meaning of this section.

The present §§ 1124.51a and 1135.51a have been eliminated, but the contents of those sections have been incorporated in §§ 1124.51 and 1135.51, respectively. These changes, which are also of a non-substantive nature, were made in conformance with **Federal Register** guidelines.

2. Performance Standards for Supply Plants Under the Pacific Northwest Order

The Pacific Northwest order should be amended to provide that the delivery requirements for qualification as a supply plant be not less than 20 percent of the total quantity of milk that is (1) physically received at the plant from dairy farmers eligible to be producers or (2) is diverted as producer milk to another plant.

To qualify as a pool plant, the order currently requires a supply plant to ship "not less than 30 percent" of the total quantity of milk that is physically received at the plant from producers or that is diverted as producer milk to another plant.

Tillamook County Creamery Association (TCCA) proposed a decrease in the shipping percentage from 30 percent to 20 percent. TCCA requested, and was granted, a temporary reduction in the delivery requirements in 1990, 1991, and 1992.

A TCCA spokesman testified that the request to reduce the supply plant shipping percentage was made by TCCA as a result of continuing changes in the industry. He pointed out that the present 30 percent shipping percentage was adopted when the Federal order was adopted February 1, 1989. The witness noted that at the time of order implementation (early 1989), Class I utilization was 155 million pounds, which represented in excess of 39 percent of total producer milk in the Pacific Northwest market. By February 1992, however, Class I utilization was 164 million pounds in the Pacific Northwest market, and the Class I pool utilization had dropped to 35 percent. By May of 1992, the percent Class I utilization decreased even further to 30.8 percent.

Two other witnesses, one representing Darigold Farms and the other Northwest Independent Milk Producers, testified in favor of TCCA's proposal. No one testified in opposition to it.

The proposal to amend the delivery requirements for qualification as a supply plant should be adopted due to the changing conditions in the market. As a result of increases in milk production, pool supply plants are utilized less by pool distributing plants as a source of milk for bottling. Consequently, they may be unable to meet the order's present shipping requirements and maintain the producer status of dairy farmers that have been historically associated with this market.

Currently, three options are open to the operators of pool supply plants who find that their milk is not needed at pool distributing plants. First, despite the fact that the milk is not needed, they can move milk from the production area to pool plants in the metropolitan area, unload it, and pick up an equal amount of milk from the pool plant and return it to the pool supply plant location where the milk can then be processed into Class III products. This adversely affects the milk quality without even considering the costs of transportation, yield reduction, and milk volume loss. When milk is handled, abuse occurs to some extent. When milk is pumped into a plant, through equipment, and then reloaded and hauled back or hauled to another plant, this process affects the quality of the product. That can affect the milk's use for fluid products, depending on the amount of handling involved. It can also affect the quality of cheese that can be made from milk.

The second alternative is to find another pool plant that has adequate pool sales and combine the two marketing reports. If the combined delivery percentage reaches 30 percent of the total production of the combined supply plants, then both plants qualify to participate in the pool. This option depends entirely on the pool supply plant's ability to find another supplier with adequate sales to cover the deficit and one who is willing to cooperate by allowing its volume to be used.

The third option available to the supply plant operator is to request a temporary reduction in the delivery requirements. Paragraph 1124.73(c) allows the director of the Dairy Division to reduce or increase the delivery percentage by 10 percent upon request.

After carefully reviewing the testimony on this issue, it is concluded that the delivery requirements for qualification as a supply plant should be decreased from not less than 30 percent to not less than 20 percent. In view of the increases in milk production and the lower Class I utilization percentage, it is much more appropriate to permanently change the delivery requirements of the order than to rely on temporary revisions in shipping percentages.

The evidence shows that TCCA is committed to meet the needs of the fluid market. For example, on several occasions it has reduced its cheese production to supply loads of fluid milk to the Portland market.

TCCA is the largest Oregon-based dairy cooperative, handling approximately one-third of the milk produced in the State each day. Of the one and a half million pounds of milk handled daily, roughly 1.1 million pounds are used to produce cheese for the retail market and 400,000 pounds are shipped to the Portland market for sale to Class I milk handlers.

The lower shipping percentage for pool supply plants will not jeopardize the needs of the fluid market, particularly with the provision now in the order that permits the Director of the Dairy Division to increase the percentage on short notice should additional shipments become necessary. The lower percentage will, however, permit milk that has been historically associated with this market to continue to participate in the marketwide pool and, for this reason, it should be adopted.

3. Status of a Milk Plant Operated by a State Institution Under the Pacific Northwest Order

The Pacific Northwest order should be amended to provide that a milk plant operated by a State institution, but which is not exempt from the provisions applicable to a producer-handler, may receive up to an average of 1,000 pounds per day of Class I milk from fully regulated handlers.

The order currently provides that "any State institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant." Thus, a State institution plant may buy bulk milk or packaged milk products as Class I milk without limits from pool plants for use in State institutions. If such a plant has sales to outlets other than State institutions, a limit on such purchases of 100 pounds per day average is applicable, and the plant must file reports, the same as any other producer-handler.

The Washington State Department of Corrections proposed amending the producer-handler and nonpool plant provisions to provide total exemption from all provisions of the order for "a plant owned and operated by a State institution or establishment which processes or packages fluid milk products."

The witness for the proponent testified that because the Department of Corrections buys milk products from pool plants, there is a continuing conflict between the State law under which the prison dairy is operated, and the Federal order's definition of a producer-handler. He explained that under Chapter 72, Correction Reform Act of 1981, Revised Code of Washington, the Washington State Reformatory Dairy (WSRD) is mandated to "(1) provide a work training program for inmates, (2) imitate private industry as much as possible and thereby be self-supporting, and (3) provide quality products to government and nonprofit agencies at or below market prices." Thus, the WSRD is allowed, under the State law, to buy whatever milk products it needs in order to serve its clients. Such purchases have, on occasion, exceeded the quantity that a producer-handler is allowed to acquire under the Pacific Northwest order, according to the testimony.

The only other witness that testified in favor of the proposal represented the Oregon Department of Corrections. Under cross examination, he indicated that there are no Oregon statutes that apply to the Department of Corrections' dairy facility. On the other hand, he also indicated that the Dairy is prohibited from selling to the private sector.

The proposal to exempt State institutions was opposed by one proprietary handler and by three cooperative associations. The principal thrust of the opposition testimony was that adoption of the proposal would open the door for State institutions to compete against fully regulated handlers for Class I and Class II sales, and that the State institutions would have a competitive advantage by being exempted from the Federal order pricing and pooling regulations.

The proposal to totally exempt a plant operated by a State institution should not be adopted because it would make it possible for the operations to compete for commercial sales against fully regulated handlers. On the other hand, there appears to be a need to provide some relief from the very limited amount of Class I fluid milk products that such a plant may receive from pool plants under the producer-handler provisions of the order.

After reviewing the testimony on this issue, it is concluded that a State institution that is not exempt from the producer-handler limits on receipts of milk from pool plants should be able to

receive more fluid milk products from pool sources than the amount allowed for other producer-handlers.

The evidence shows that the WSRD has had problems in conducting its operation in accord with its operating mandate while, at the same time, staying within the limits that the order places on receipts by a producer-handler.

The current limit on receipts of fluid milk products from pool plants by a producer-handler has been in effect for many years (Official Notice is taken of the Order Amending The Order Regulating The Handling Of Milk In The Puget Sound, Washington, Marketing Area, effective September 1, 1959, as published in the **Federal Register** on July 29, 1959, beginning at page 6027).

While this proceeding does not deal with producer-handlers as such, it is clear that the 100 pounds per day limit as applied to a State institution is unreasonably low. This is clearly demonstrated in the testimony that in the last five years the number of inmates in the Washington State Department of Corrections institutions has increased from 6,000 to 10,000 inmates, and that growth to 12,000 is expected in the next three years. Since the Department of Corrections is authorized to purchase products that it does not process or manufacture, the need for greater supplemental purchases is clear. Accordingly, a State institution milk plant should be permitted to receive an average of 1,000 pounds per day of Class I fluid milk products from pool plants during the month. However, no change in the limit should be provided for producer-handlers that are not State institutions.

4. Plant Location Adjustments for Yakima County, Washington, Under the Pacific Northwest Order

The proposal to change the location adjustment (No. 3 in the Notice of Hearing) on all producer milk received at plants in Yakima County in Federal Milk Order 124 is denied.

The order defines zones for the purpose of determining location adjustments. The order currently states that Yakima County, Washington, is in Zone 4, which has a 15 cents per hundredweight location adjustment.

Darigold Farms proposed a decrease in the location adjustment from 15 cents per hundredweight to 6 cents per hundredweight, a change of 9 cents. Accordingly, Yakima County would move from Zone 4 to Zone 2.

The witness for the proponent testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers or alternatively to attract packaged milk from a pool plant located in outlying areas. The Pacific Northwest order has four market centers: Portland, Oregon; Eugene, Oregon; Seattle, Washington; and Spokane, Washington. Yakima County is roughly in the center of the triangle formed by Portland, Seattle, and Spokane.

The witness noted that the Pacific Northwest Order has relatively low Class I utilization, about 35 percent. There is more than an adequate supply of bulk milk to serve both fluid and manufacturing markets. He also pointed out that in a low utilization market such as Pacific Northwest, location adjustments are seldom needed. There has been no history of handlers in the Pacific Northwest market not being able to obtain bulk milk.

The witness testified that Darigold was not proposing the elimination of location adjustments, but rather to maintain the status quo for all the other fluid milk handlers in the market. The only fluid plant that would be affected is the Darigold plant in Yakima County, which would pay an added nine cents per hundredweight.

The witness's testimony drew a parallel between Yakima County, Washington, and Whatcom County. The two counties are very similar, he noted, in that there's a large concentration of milk in a small area. Moreover, both plants are located outside major market centers, and both counties have small fluid operations which serve the county area but not the market centers.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991. The plant was needed to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Comparing December of 1980 to December of 1990, Yakima County dairymen increased their deliveries of producer milk from 18.9 million pounds to 49.7 million pounds per month. The Yakima County producers currently account for 13.5 percent of the milk marketed in the Pacific Northwest order.

The witness noted that, prior to the opening of the Darigold/Sunnyside plant, the milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. No location adjustment was needed since milk production increases in western Washington are expected to keep all plants full.

The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside, in effect, constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant, which was needed by all producers to ensure outlets for all milk produced in the marketing area. Had the plant not been built, disorderly market operations surely would have developed, he said. The witness argued that this "penalty" is unnecessary because hauling costs will move the milk to market centers without location adjustments. He pointed out, for example, that Darigold's hauling costs from Sunnyside to Spokane, the closest market center, is 76 cents per hundredweight for a distance of 120 miles, or .6 cents per mile. In comparison, the proposed decrease from 15 cents to 6 cents would move the milk only about 15 miles at the .6-cent-per-hundredweight cost.

The witness testified that for any producer farm located closer to Spokane than to Sunnyside, it is cheaper to move milk to Spokane than to Sunnyside even with no location adjustment. Reducing the location adjustment to six cents merely moves the geographic break-even point 15 miles closer to Sunnyside and enlarges by the same 15 miles the area from which Spokane pool plants can readily attract milk.

The witness testified that within the original area, without the 15-mile adjustment, there already is enough milk to satisfy the needs of Spokane pool plants, so there is no need to provide a further incentive to move milk that is located in that 15-mile area closer to Sunnyside. The Sunnyside milk also can and does supply Seattle pool plants and could service plants in Portland and Spokane. A similar analysis shows that there is far more milk in the areas closer to Seattle and Portland than needed by pool plants in those areas. Therefore, the 15-mile incentive which the 6-cent location adjustment represents is not really needed as an incentive to move milk to those market centers. The witness noted that the combination of some Yakima Valley milk that is surplus to the Sunnyside plant's capacity, plus the western Washington milk, is adequately supplying the needs of all the plants in western Washington.

Three other witnesses testified on Proposal No. 3. The witnesses for Portland Independent Milk Producers Association and Olympia Cheese Company were opposed to Proposal No. 3, and the witness from Inland Northwest Dairies, Inc., also expressed reservations. Two briefs discussing Proposal No. 3 were filed, one by Darigold Farms in favor of the proposal, and one by Portland Independent Milk Producers Association opposed to the proposal.

Portland Independent Milk Producers Association opposed Proposal No. 3 to change the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment that Whatcom County currently enjoys. The witness testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers. He pointed out that the proposed zone change in the proposal appears to have the opposite effect in that it would increase the return to producers delivering milk to plants located in Yakima County.

The witness noted that increased returns could send two signals. One signal is that there is actually an additional demand for fluid milk to be delivered to Yakima County, which is not believed to be the case. There appears to be more than an adequate supply of milk for the Yakima County fluid operations. The second signal sent to producers when there is a situation of increasing returns is to increase production. The witness did not feel that either of these signals is appropriate in light of the theory behind a functioning location adjustment program or the already increasing supplies of milk surplus to fluid market needs in these areas.

The witness also expressed concern that there is an increasing imbalance between freight costs of milk produced in the Yakima Valley area and delivered to local plants and that milk which moves up to 200 miles to the market center. He argued that acceptance of Proposal No. 3 further accentuates the potential imbalance. The witness stated that it was their understanding that Yakima County is the type of market situation that a location differential program is designed to protect.

In comparing Whatcom County to Yakima County in this proposal, the witness extended that comparison by quoting from the 1988 final decision (53 FR 49165) which merged the Oregon/Washington and Puget Sound/Inland Empire Federal milk orders into the Pacific Northwest order and established the current location adjustment program under the merged order.

"Proponents' arguments for reducing the present six cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plant exists to provide an outlet for surplus milk produced in these areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County, for instance, than Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not been hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost."

The witness quoted another passage from that decision where it states,

"these markets, with manufacturing plants located in heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to modernize or increase the location adjustment at Whatcom County as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County."

The witness pointed out that the same theory underlying the 1988 decision relative to Whatcom County is applicable to Proposal No. 3, and expressed the view that based on the current harmonious relationships within the marketplace, the 15-cent location adjustment should be maintained if location adjustments are going to continue to be recognized within this Federal order.

Olympia Cheese Company opposed Proposal No. 3 relative to changing the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment as Whatcom County. The witness testified that Olympia Cheese Company currently procures a substantial portion of its milk supply in Yakima County. That milk has to be shipped over the mountains in order to get to western Washington where its plant is located. The company subsidizes part of those hauling costs. The witness maintains that the proposed reduction in the location adjustment in Yakima County will further add to milk costs because in order to keep the milk supply from that county, hauling costs will have to be subsidized further by the same amount as the reduction in the location adjustment in order to stay competitive in milk procurement in that region.

The witness testified that Olympia Cheese Company's suppliers are going to be competing precisely against those suppliers in the Yakima County area, forcing them to come up with the same amount, even though its suppliers go across the mountains to western Washington. The witness contends that if its suppliers were breaking even before with respect to hauling cost, with the adoption of Proposal No. 3 they would be nine cents worse off.

The Olympia Cheese Company's witness stated that a location adjustment's traditional role is to reduce the payment to individual farmers for any milk that stays in the county—i.e., that milk which is not shipped to a heavily populated area. This provides a disincentive and promotes the shipment of milk from high production/low population areas to high population areas. The witness stated that in the case of Proposal No. 3, it appears the location adjustment is doing the opposite of intended, in the sense that all of a sudden the incentive is reduced, therefore increasing the incentive for the milk to stay in Yakima County. The witness pointed out that location adjustments are there precisely to promote shipment of milk to populated areas, and that they were used as a mechanism by USDA for this purpose.

Inland Northwest Dairies, Inc., also expressed concerns over the adoption of Proposal No. 3. The witness emphasized that there has been a very harmonious relationship in the marketplace. The witness stated that, with the adoption of Proposal No. 3, the company might be in a much tougher position in the future to recruit milk from producers in the Yakima Valley, from where 80 percent of its milk supply comes. He contended that because of competitive conditions, Darigold's producers may not have to pay as much in the future to get their milk to the Sunnyside plant as what others would have to pay to bring milk from the Yakima region to Spokane, Washington.

The witness was further concerned with adjusting the location allowance because of the situation that also exists in Moses Lake, where Safeway 85, Inc., a pool plant, has a 15-cent location adjustment. He stated that reducing the location adjustment in Yakima County could create some disparity in the marketplace because Safeway is definitely competition. The witness emphasized that the majority of its milk comes from the Yakima and Benton County region and that in the long-term there may be some inequities should the amount charged Darigold producers in

the future be adjusted by the location adjustment in Proposal No. 3.

The purpose and intention of location adjustments is to provide the incentive to move milk from one area to another for fluid uses only. Generally speaking, this means moving milk from outlying production areas to the more heavily populated market centers.

The evidence indicates that there is no need to move milk for fluid use from Yakima County to any of the population centers in this market: i.e., Seattle, Portland, Eugene or Spokane. If anything, the context of the total testimony raises a question about whether there is any need for location adjustments in this market. With an abundance of fluid milk in the marketplace, location adjustments may not be needed as an incentive to attract producer milk from outlying areas to market centers. No proposal was presented, however, that addressed the concept of having no location adjustments.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991 to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Prior to the opening of the Darigold/Sunnyside plant, milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside in effect constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant. In light of this, however, Darigold producers now have access to the local Sunnyside plant without having to incur the costs of hauling milk to Seattle and Chehalis, Washington.

Current conditions indicate harmonious relationships within the marketplace. The location adjustment change proposed is not needed to prevent disorderly marketing conditions in Yakima County or anywhere within the marketplace. Fluid milk needs are being more than adequately met, and there appears to be no need to encourage production of milk in the Pacific Northwest market by increasing the level of returns to producers. If anything, with an abundance of Class I milk available in the metropolitan areas, this may be an indication that the entire Class I price and location adjustment structure should be reviewed.

We would add, moreover, in response to testimony that a reduction of the location adjustment would increase the costs of obtaining milk for a cheese plant in western Washington, that it is not the purpose of a location adjustment to facilitate the movement of milk to a distant location for manufacturing uses.

In view of the testimony presented, we find no compelling reason to adopt the proposal. We must conclude that Yakima County, Washington, should remain in Zone 4 with a 15-cent-per hundredweight location adjustment.

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 Orders 124 and 135 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) The tentative 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 respective marketing areas, and the minimum prices specified in the tentative 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 tentative 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, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR parts 1124 and 1135 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1124 and 1135 continues to read as follows:

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

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.7 [Amended]

2. In § 1124.7(b) introductory text, the number "30" is changed to "20".

§ 1124.9 [Amended]

3. In § 1124.9(c), the words "and nonfat milk solids" are added following the word "butterfat".

4. In § 1124.10, paragraph (c)(2) is revised to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(c)* * *

(2) The producer-handler handles fluid milk products from sources other than the milk production facilities and resources specified in paragraph (b) of this section, except as specified below:

(i) A producer-handler, other than a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month; and

(ii) A State institution that otherwise qualifies as a producer-handler, but which processes or receives milk for consumption outside of a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 1,000 pounds per day during the month.

* * * * *

5. Section 1124.19 is revised to read as follows:

§ 1124.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1124.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) from the computation in paragraph (e)(1) and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

6. In § 1124.30, paragraphs (a)(1)(i), (ii), (c)(1), (2) and (3) are revised to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the pounds of nonfat milk solids contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c) and the pounds of nonfat milk solids contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, and nonfat milk solids received from producers;

(2) The utilization of skim milk, butterfat, and nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, and nonfat milk solids delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

7. In § 1124.31, paragraphs (a)(1), (b) introductory text, and (b)(1) are revised to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and nonfat milk solids contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.75(a) to be considered in the computation of its obligation pursuant to § 1124.75 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk received from each producer and the pounds of butterfat and nonfat milk solids contained in such milk;

* * * * *

8. Section 1124.32 is revised to read as follows:

§ 1124.32 Other reports.

In addition to the reports required pursuant to § 1124.30 and 1124.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under the order.

9. Section 1124.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1124.41 Shrinkage.

* * * * *

(c) * * * If the operator of a plant or a commercial food processing establishment pursuant to § 1124.20 purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

10. The center heading preceding § 1124.50 is revised to read **"Class and Component Prices".**

11. Section 1124.50 is revised to read as follows:

§ 1124.50 Class and component prices.

The class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The *Class I price*, subject to the provisions of § 1124.52, shall be the basic formula price defined in § 1124.51 for the second preceding month plus $1.90;

(b) The *Class II price* shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51(a) and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51(b).

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

(d) The *Class III-A price* for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1124.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of: (1) the skim price computed in paragraph (e) divided by 100; and (2) the butterfat differential computed pursuant to § 1124.19(e) multiplied by 10.

(g) The *nonfat milk solids price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the average percentage of nonfat milk solids in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

12. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1124.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1124.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1124.51a [Removed]

13. Section 1124.51a is removed.

14. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III-A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the nonfat milk solids price.

15. The center heading preceding § 1124.60 is revised to read **"Differential Pool And Handler Obligations".**

16. Section 1124.60 is revised to read as follows:

§ 1124.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of the handler's pool plants, and for each handler described in § 1124.9 (b) and (c), an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the pounds of producer milk in Class I pursuant to § 1124.44 by the difference between the Class I price, adjusted pursuant to § 1124.52, and the Class III price;

(b) Multiply the pounds of producer milk in Class II pursuant to § 1124.44 by the difference between the Class II price and Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the pounds of skim milk in Class I producer milk pursuant to § 1124.44 by the skim milk price for the month;

(e) Multiply the nonfat milk solids price for the month by the pounds of nonfat milk solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of nonfat milk solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b), and paragraph (f)(vi) of this section:

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Overage at a nonpool plant that is located on the same premises as a pool plant shall be prorated between the quantity of skim and butterfat received by transfer from the pool plant and other source milk received at the nonpool plant. The pool plant operator's obligation to the pool with respect to such overage will be computed by adding the prorated pounds of skim milk and butterfat to the amounts assigned pursuant to § 1124.44(a)(15) and (b);

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1124.44(a)(10) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(h) Multiply the difference between the Class I price, adjusted for the location of the pool plant, and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1124.43(f) and subtracted from Class I pursuant to § 1124.44(a)(8)(i) through (iv), (vii), and § 1124.44(b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1124.75(b)(4) or (c);

(i) Multiply the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8)(v) and (vi) and § 1124.44(b) by the difference between the Class I price at the transferor plant and the Class III price;

(j) Multiply the difference between the Class I and Class III prices, applicable at the location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1124.43(f) and § 1124.44(a)(8)(v) and the combined pounds of skim milk and butterfat in receipts from an unregulated supply plant assigned pursuant to § 1124.44(a)(12) and (b), excluding such skim milk or butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1124.43(f);

(l) Add or subtract, as appropriate, the amount necessary to correct errors disclosed by the verification of the handler's receipts and utilization of skim milk and butterfat as reported for previous months; and

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

17. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of weighted average differential price.

A *weighted average differential price* for each month shall be computed by the market administrator as follows:

(a) Combine into one total the value computed pursuant to § 1124.60(a) through (c) and (f) through (m) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1124.74;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(j); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the weighted average differential price.

18. Section 1124.62 is redesignated as § 1124.63 and revised to read as follows:

§ 1124.63 Announcement of the weighted average differential price, the producer nonfat milk solids price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The weighted average differential price;

(b) The producer nonfat milk solids price; and

(c) An *estimated uniform price* per hundredweight of milk which is computed by adding the weighted average differential price to the basic formula price.

19. A new § 1124.62 is added as follows:

§ 1124.62 Computation of producer nonfat milk solids price.

The *producer nonfat milk solids price* shall be computed by the market administrator each month as follows:

(1) Combine into one total the values computed pursuant to § 1124.60(d) and (e) for all handlers who filed reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month;

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round to the nearest whole cent.

20. Section 1124.70 is revised to read as follows:

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement" fund into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.75 and out of which shall be made all payments to handlers pursuant to § 1124.72. Payments due a handler from the fund shall be offset against payments due from such handler.

21. Section 1124.71 is revised to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, which results from subtracting the sum computed pursuant to paragraph (a) of this section from the sum computed pursuant to paragraph (b):

(a) The sum of:

(1) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d).

(b) The sum of:

(1) The value of milk received by the handler from producers at the applicable prices pursuant to § 1124.73(a)(2)(i), (ii), and (iii);

(2) The amount to be paid by the handler to cooperative associations pursuant to § 1124.73(d); and

(3) The value at the weighted average differential price adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(j); and

22. Section 1124.72 is revised to read as follows:

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a), less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71, 1124.75, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

23. Section 1124.73 is revised to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payment pursuant to this paragraph or paragraph (b) of this section to each producer from whom milk is received during the month:

(1) On or before the last day of the month, to each producer who did not discontinue shipping milk to such handler before the 18th day of the month at not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first 15 days of the month, subject to adjustment for proper deductions authorized in writing by the producer; and

(2) On or before the 19th day after the end of each month, an amount computed as follows:

(i) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(ii) Add the amount that results from multiplying the producer nonfat milk solids price for the month by the total pounds of nonfat milk solids in the milk received from the producer;

(iii) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the weighted average differential price for the month as adjusted pursuant to § 1124.74(a);

(iv) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(v) Subtract proper deductions authorized in writing by the producer; and

(vi) Subtract any deduction required pursuant to statute.

(3) If by the 19th day after the end of the month, a handler has not received full payment from the market administrator pursuant to § 1124.72, the payments to producers required pursuant to paragraph (a)(2) may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the market administrator. The handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment from the market administrator.

(b) The payments required in paragraph (a) of this section shall, upon the request of a cooperative association qualified under § 1124.18, be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of the producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant, or the cooperative's duly authorized agent, for butterfat and nonfat milk solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat and nonfat milk solids received during the first 15 days of the month at not less than the butterfat and nonfat milk solids prices, respectively, for the preceding month; and

(2) On or before the 15th day after the end of the month, an amount of money determined in accordance with computations made on the same basis as those specified in paragraph (a)(2)(i) through (iii) of this section, minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler pursuant to § 1124.9(a) that received milk from a cooperative association that was a handler pursuant to § 1124.9(c) shall pay the cooperative association for such milk as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for milk received during the month an amount of money determined in accordance with the computations specified in

§ 1124.73(a)(2)(i) through (iii), minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under § 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month, with a supporting statement for milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request, provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

§ 1124.74 [Removed]

24. Section 1124.74 is removed.

§ 1124.75 [Redesignated as § 1124.74 and Amended]

25. Section 1124.75 is redesignated as § 1124.74, and paragraph (c) is revised to read as follows:

§ 1124.74 Plant location adjustments for producers and on nonpool milk.

* * * * *

(c) For purposes of the computations pursuant to § § 1124.71(a) and 1124.72, the weighted average differential price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted weighted average differential price shall not be less than zero.

§ 1124.76 [Redesignated as § 1124.75 and Amended]

26. Section 1124.76 is redesignated as § 1124.75. In the redesignated § 1124.75(a)(1)(i), the words "or estimated uniform price" are inserted after the words "uniform price"; the reference to "§ 1124.60(f)" is changed to read "§ 1124.60(j)"; and the reference to "§ 1124.71(a)(2)(iii)" is changed to read "§ 1124.71(b)(3)". In § 1124.75(a)(2)(i), the reference to "§ 1124.74" is changed to read "§ 1124.19(e)". In § 1124.75(b)(4), the word "estimated" is inserted before the words "uniform price".

§ 1124.77 [Redesignated as § 1124.76]

27. Section 1124.77 is redesignated as § 1124.76.

§ 1124.78 [Redesignated as § 1124.77 and Amended]

28. Section 1124.78 is redesignated as § 1124.77, and the reference in paragraph (a) to "§ 1124.77" is changed to read "§ 1124.75".

§ 1124.85 [Amended]

29. In § 1124.85(b), the reference to "§ 1124.60(f)" is changed to read "§ 1124.60(h) and (j)" and in § 1124.85(c)(2), the reference to "§ 1124.76(b)(2)(ii)" is changed to read "§ 1124.75(b)(2)(ii)".

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

§ 1135.9 [Amended]

1. In § 1135.9(c), the words "and protein tests" are added following the word "butterfat".

2. Section 1135.19 is revised to read as follows:

§ 1135.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1135.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the *National Cheese Exchange* (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price, as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

3. In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e), respectively, and the introductory text and paragraphs (a) and (c) are revised and a new paragraph (b) is added to read as follows:

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9(c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9(b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

* * * * *

4. In § 1135.31(a), the word "20th" is changed to "22nd" and paragraph (a)(4) is revised to read as follows:

§ 1135.31 Payroll reports.

(a) * * *

(4) The average butterfat and protein content of his/her milk;

* * * * *

5. In § 1135.41, the colon at the end of paragraph (b)(3) is changed to a semicolon and paragraph (c) is revised to read as follows:

§ 1135.41 Shrinkage.

* * * * *

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

6. The center heading preceding § 1135.50 is revised to read "**CLASS AND COMPONENT PRICES**".

7. In § 1135.50(b), the reference to "§ 1135.51a" is revised to read "§ 1135.51(b)"; in § 1135.50(b)(1), the reference to "§ 1135.51" is changed to read "§ 1135.51(a)"; in § 1135.50(b)(2), the reference to "§ 1135.51a" is changed to read "§ 1135.51(b)"; paragraph (a) is revised as follows; and new paragraphs (e), (f), and (g) are added as follows:

§ 1135.50 Class and component prices.

* * * * *

(a) The *Class I price* shall be the basic formula price pursuant to § 1135.51(a) for the second preceding month plus $1.50.

* * * * *

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) the skim price computed in paragraph (e) of this section divided by 100; and

(2) the butterfat differential computed pursuant to § 1135.19(e) multiplied by 10.

(g) The *milk protein price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

8. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1135.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1135.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1135.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in

the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1135.51a [Removed]

9. Section 1135.51a is removed.

10. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III–A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the milk protein price.

11. A center heading is added preceding § 1135.60 to read **"DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".**

12. Section 1135.60 is revised to read as follows:

§ 1135.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler described in § 1135.9(a) with respect to each of the handler's pool plants and for each handler qualified pursuant to § 1135.9(b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III–A by the amount that the Class III–A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to § 1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to § 1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price; and

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price;

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1135.44(a)(9) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's protein and butterfat prices.

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1135.43(d) and subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from another order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1135.76(a)(5) or (c);

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and § 1135.44(b);

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1135.43(d) and § 1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1135.43(d); and

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

13. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of weighted average differential price.

A *weighted average differential price* for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to § 1135.60(j); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

§ 1135.62 [Redesignated as § 1135.63]

14. Section 1135.62 is redesignated as § 1135.63 and revised to read as follows:

§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The weighted average differential price;

(b) The producer protein price; and

(c) An *estimated uniform price* per hundredweight of milk computed by adding the weighted average differential price to the basic formula price.

15. A new § 1135.62 is added as follows:

§ 1135.62 Computation of producer protein price.

A *producer protein price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1135.60(d) and (e) for all handlers who filed reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month;

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and

(c) Round to the nearest whole cent. The result shall be the producer protein price.

16. Section 1135.70 is revised to read as follows:

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to § § 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to § § 1135.72, and 1135.75.

17. Section 1135.71 is revised to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total obligation of the handler for such month as determined pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and

(3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(j).

18. Section 1135.72 is revised to read as follows:

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

19. In 1135.73, paragraphs (b), (d), and (e) (2) through (6) are revised to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:

(1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(2) Multiply the producer protein price for the month by the total pounds of protein in such milk;

(3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;

(4) Subtract payments made to the producer pursuant to paragraph (a) of this section;

(5) Subtract deductions for marketing services pursuant to § 1135.86; and

(6) Subtract proper deductions authorized in writing by such producer.

* * * * *

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) * * *

(1) * * *

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

§ 1135.74 [Removed]

20. Section 1135.74 is removed.

§ 1135.75 [Redesignated as § 1135.74 and Amended]

21. Section 1135.76 is redesignated as § 1135.74 and the following changes are made in that section:

a. In redesignated § 1135.74(a)(4), the word "estimated" is inserted before the words "uniform price";

b. In § 1135.74(b)(1)(ii), the words "or estimated uniform price" are added

following the words "uniform price" where that expression twice appears;

c. In § 1135.74 (b)(1)(iii) introductory text, the reference to "§ 1135.60(f)" is changed to read "§ 1135.60(j)"and the reference to "§ 1135.71(a)(2)(ii)" is changed to read "§ 1135.71(b)(2)".

d. In § 1135.74, paragraphs (b)(1)(iii)(*a*) through (*c*) are redesignated as (b)(1)(iii)(A) through (C); and

e. In § 1135.74(b)(2)(i) and (ii), the reference to "§ 1135.74" is changed to read "§ 1135.19(e)".

§ 1135.77 [Redesignated as § 1135.75]

22. Section 1135.77 is redesignated as § 1135.75.

§ 1135.78 [Redesignated as § 1135.76 and Amended]

23. Section 1135.78 is redesignated as § 1135.76, and the reference to sections "1135.76, 1135.77, and 1135.78" is changed to read "1135.74, 1135.75, and 1135.76," respectively.

§ 1135.85 [Amended]

24. In § 1135.85(b), the reference to "§ 1135.60(d) and (f)" is changed to read "§ 1135.60(h) and (j)"; and in § 1135.85(c), the reference to "§ 1135.76(a)(2)" is changed to read "§ 1135.74(a)(2)".

Dated: October 7, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93-25179 Filed 10-14-93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-122-AD]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes Equipped With CFM International CFM56-3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-300, -400, and -500 series airplanes. This proposal would require modification, adjustments, and tests of the thrust reverser system; and repair, if necessary. This proposal is prompted by results of a safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by December 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-122-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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

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 93-NM-122-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. 93-NM-122-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has completed a safety review of the thrust reverser system installed on Boeing Model 737 series airplanes equipped with CFM International CFM56-3 series engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in controllability of the airplane.

Consequently, Boeing has developed a modification for these airplanes, which, when accomplished, will further enhance the level of safety inherent in the original type design of the thrust reverser system. The FAA has determined that the installation of these additional features will further reduce the likelihood of an in-flight thrust reverser deployment.

In addition, the manufacturer reported that certain thrust reverser systems failed to deploy during five landings. These incidents occurred on airplanes on which an additional thrust reverser system locking feature (denoted as a sync-lock) had been installed prior to delivery. Subsequent investigation of those incidents revealed an electro-mechanical synchronization problem that occurred as a result of hydraulic pressure being applied to the thrust reverser actuators prior to electrical power being applied to the sync-lock solenoids, which prevented the sync-locks from unlocking and the thrust reversers from deploying.

The FAA has reviewed and approved Boeing Service Bulletin 737-78-1053, Revision 1, dated July 1, 1993, that describes procedures for installation of an additional thrust reverser system locking feature (sync-lock), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. The sync-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA and is installed on new-production Model 737 series airplanes equipped with CFM International CFM56-3 series

engines. The FAA has determined that installation of the sync-lock is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

Boeing also has issued Service Bulletin 737-78-1058, dated July 1, 1993, which the FAA has reviewed and approved. The service bulletin describes procedures for modification of the sync-lock wiring for those airplanes equipped with a sync-lock that was installed in accordance with Boeing Service Bulletin 737-78-1053, dated December 17, 1992, or prior to delivery. The modification involves adding a circuit that delays power to the isolation valve and directional control valve until after power is applied to the sync-lock system; and, for certain affected airplanes, removing the manual drive units and installing the sync-lock units. Accomplishment of this modification will ensure that proper thrust reverser switch synchronization occurs when the command is given to deploy the thrust reversers.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive adjustments and tests to verify proper operation of the thrust reverser system, and repair, if necessary. These actions would be required to be accomplished in accordance with procedures described in the Boeing 737 Maintenance Manual.

For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 737-78-1053, dated December 17, 1992, the proposed AD also would require installation of an additional thrust reverser system locking feature (sync-lock). Installation of the additional locking feature terminates the requirement for repetitive adjustments and tests. The installation would be required to be accomplished in accordance with Boeing Service Bulletin 737-78-1053, Revision 1, dated July 1, 1993.

For airplanes on which the sync-lock feature was installed during production or as a modification in accordance with Boeing Service Bulletin 737-78-1053, dated December 17, 1992, this AD would require modification of the sync-lock wiring in accordance with Boeing Service Bulletin 737-78-1058, dated July 1, 1993. Modification of the sync-lock wiring terminates the requirement for repetitive adjustments and tests.

Finally, this proposed AD also would require periodic operational tests of the sync-lock installation, and repair of any discrepancies. Accomplishment of these tests is necessary to ensure that the sync-lock has not failed in the "unlocked" state. These tests would be required to be accomplished in accordance with procedures described in the Boeing 737 Maintenance Manual. The FAA may consider revising the intervals at which the operational tests would be required based on sync-lock service experience.

There are approximately 1,079 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 531 airplanes of U.S. registry would be required to accomplish adjustments and tests of the thrust reverser system, installation of the sync-lock, and operational tests of the sync-lock installation. The FAA estimates that it would take approximately 1 work hour to accomplish the adjustments and tests, 198 work hours to accomplish the installation, and 1 work hour to accomplish the operational tests. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of airplanes on which the sync-lock feature was not installed during production or as a modification is estimated to be $5,841,000, or $11,000 per airplane.

The FAA estimates that 8 airplanes of U.S. registry would be required to accomplish adjustments and tests of the thrust reverser system, modification of the sync-lock wiring, and operational tests of the sync-lock installation. The FAA estimates that it would take approximately 1 work hour to accomplish the adjustments and tests, 70 work hours to accomplish the wiring modification, and 1 work hour to accomplish the operational tests. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of airplanes on which the sync-lock feature was installed during production or as a modification is estimated to be $31,680, or $3,960 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,872,680.

The FAA recognizes the large number of work hours required to accomplish the proposed modification. The 5-year compliance time proposed in paragraphs (b) and (c) of this AD should allow the sync-lock installation and wiring modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 "significant regulatory action" under Executive Order 12866; (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—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 93-NM-122-AD.

Applicability: All Model 737-300, -400, and -500 series airplanes equipped with General Electric CFM56 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 hours time-

in-service until the modification required by paragraph (b) or (c) of this AD, as applicable, is accomplished, perform adjustments and tests of the thrust reverser system to verify proper operation of the thrust reverser system in accordance with Section 78-31-00, pages 501, 513, and 515 through 517, dated March 15, 1992; and pages 502 through 512, 514, and 518, dated November 15, 1992; of the Boeing 737 Maintenance Manual. Prior to further flight, repair any discrepancy found, in accordance with procedures described in the Boeing 737 Maintenance Manual.

(b) For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 737-78-1053, dated December 17, 1992: Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync-lock installation) in accordance with Boeing Service Bulletin 737-78-1053, Revision 1, dated July 1, 1993. Installation of the additional locking feature constitutes terminating action for the tests required by paragraph (a) of this AD.

(c) For airplanes on which the sync-lock feature was installed during production or as a modification in accordance with Boeing Service Bulletin 737-78-1053, dated December 17, 1992: Within 5 years after the effective date of this AD, modify the sync-lock wiring in accordance with Boeing Service Bulletin 737-78-1058, dated July 1, 1993. Modification of the sync-lock wiring constitutes terminating action for the tests required by paragraph (a) of this AD.

(d) For all airplanes: Within 30 days after the effective date of this AD, or within 1,000 hours time-in-service after accomplishing the modification required by paragraph (b) or (c) of this AD (as applicable), whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service; perform operational tests of the thrust reverser sync-lock installation to verify that the sync-locks are not failing in the unlocked state, in accordance with the procedures described in Section 78-31-00, pages 534-538, dated December 20, 1992; and pages 539-540, dated March 20, 1993; of the Boeing 737 Maintenance Manual. Prior to further flight, repair any discrepancy found in accordance with procedures described in the Boeing 737 Maintenance Manual.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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 October 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25303 Filed 10-14-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-AGL-2]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter the width of a portion of Federal Airways V-7, V-51, V-97, and V-399, located in Indiana and Illinois. The standard width of V-7, V-51, and V-97 would be reduced to 3 miles west of the centerline. The standard width of V-399 would be reduced to 3 miles east of the centerline. Altering the airways by redefining the lateral boundaries would provide more efficient utilization of the airspace and would reduce air traffic control (ATC) workload.

DATES: Comments must be received on or before December 2, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 93-AGL-2, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AGL-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-7, V-51, V-97, and V-399, located in Indiana and Illinois. The airspace northwest of Boiler, IN, encompassing these airways is under the control of two distinct sectors in the Chicago Air Route Traffic Control Center, and the Lafayette Air Traffic Control Tower (ATCT). Under this proposal, flights heading northwest on these four airways would be handled in this airspace by the Lafayette ATCT.

The standard width of V–7, V–51, and V–97 would be reduced to 3 miles west of the centerline. The standard width of V–399 would be reduced to 3 miles east of the centerline. Altering these airways would minimize ATC communication requirements and improve the process of coordinating flight progress in the Boiler, IN, area. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–7 [Revised]

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; INT Lee County 353° and Lakeland, FL, 170° radials; Lakeland; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V–51 [Revised]

From Miami, FL; INT Miami 337° and Pahokee, FL, 175° radials; Pahokee; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL.

* * * * *

V–97 [Revised]

From Miami, FL, via La Belle, FL; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; 15 miles 7 miles wide (4 miles east, and 3 miles west of centerline), 47 miles 8 miles wide; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–399 [Revised]

From Indianapolis, IN, via INT Indianapolis 312° and Boiler, IN, 159° radials, Boiler; 15 miles 7 miles wide (3 miles east, and 4 miles west of centerline), 13 miles 8 miles wide; INT Boiler 313° and Peotone, IL, 152° radials; to Peotone.

* * * * *

Issued in Washington, DC, on October 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25367 Filed 10–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 352, 700, and 740

[Docket No. 78N–0038]

RIN 0905–AA06

Sunscreen Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 7, 1994, the comment period on the notice of proposed rulemaking over-the-counter (OTC) that would establish conditions under which sunscreen drug products are generally recognized as safe and effective and not misbranded (May 12, 1993; 58 FR 28194). FDA is taking this action in response to a request to extend the comment period for an additional 180 days to allow more time to comment on this proposal. This extension of the comment period does not apply to comments on ultraviolet A (UVA) testing, protection, ingredients, and labeling. The agency wants comments on these issues to be submitted by November 8, 1993, in order to have a workshop on these subjects in the spring of 1994. This proposal is part of the ongoing review of OTC drug products conducted by the FDA.

DATES: Written comments by February 7, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 28194), FDA issued a notice of proposed rulemaking (tentative final monograph) that establish the conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded. Interested persons were given until November 8, 1993, to submit comments on the proposal.

On August 27, 1993, the Cosmetic, Toiletry, and Fragrance Association (CTFA), a trade association, requested a 180-day extension to May 12, 1994, in which to file written comments. CTFA contended that the immense breadth of the proposal and the many issues involved made it impossible to formulate a reasoned response in the 6 months provided. Although CTFA recognized that additional time (i.e., until May 12, 1994) was provided to submit new data to FDA, it contended that in numerous instances CTFA members will need to conduct additional testing simply to understand the impact of the proposals. Further, CTFA stated that its members will need to reanalyze tests conducted several years ago in order to provide meaningful comment with respect to the new proposals.

CTFA added that many of the proposals represent fundamental departures from the August 25, 1978, advance notice of proposed rulemaking (43 FR 38206), which has served as the industry's guide for the past 15 years. CTFA contended that these proposals, if promulgated, would require sweeping changes in the way virtually every "beach" and "nonbeach" sunscreen product is tested and labeled. CTFA mentioned that its members need to address the many new proposed sunscreen protection factor testing requirements, the new statistical procedure, and UVA protection. Also, CTFA added that it was necessary to evaluate the proposal in light of recent regulatory proposals for sunscreens in Europe, Australia, and Japan.

FDA has carefully considered the request and believes that some additional time for comment is in the public interest. However, in view of the 180 days already provided, the agency is granting a 90-day extension rather than the 180 additional days requested by CTFA.

As previously stated, new data may be submitted until May 12, 1994. If new data demonstrate a need to revise previously submitted comments, interested persons should inform the agency accordingly when submitting the new data. Accordingly, the comment period is extended to February 7, 1994.

This extension of the comment period does not apply to comments on UVA testing, protection, ingredients, and labeling. The agency wants comments on these issues to be submitted by November 8, 1993, in order to have a workshop on these subjects in the spring of 1994. Comments received on UVA issues will be used to formulate questions and subjects for discussion at the workshop. Prior to and following the workshop, the administrative record for the sunscreen drug products rulemaking will be reopened to allow additional submissions of comments and data on UVA issues.

Interested persons may, on or before February 7, 1994, submit to the Dockets Management Branch (address above) written comments regarding all sunscreen drug product proposals with the exception of comments pertaining to UVA testing, protection, ingredients, and labeling. Comments pertaining to UVA issues are to be submitted by November 8, 1993, in accord with the May 12, 1993, proposal. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-25319 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 221, 236, 880, 881, 882, 883, 884, 885, 886, 889, 890, 905, and 960

[Docket No. R-93-1687; FR-3466-P-01]

RIN No. 2501-AB62

Designation of Tenant Assistant

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: In compliance with section 644 of the Housing and Community Development Act of 1992, this rule would amend the regulations for federally assisted housing programs to require that owners of federally assisted housing projects allow applicants for admission to submit with the application, the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization, if the applicant wishes to submit such information.

DATES: Comment due date: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: For issues related to parts 215, 221, 236, 880, 881, 883, 884, and 886: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, Telephone (202) 708-3944; For issues related to parts 885, 889 and 890: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, room 6130, Telephone (202) 708-4542; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing or speech-impaired individuals (TDD) is available at (202) 708-4594. (These telephone numbers are not toll-free.)

For issues related to part 905: Dominic Nessi, Director, Office of Native American Programs, room 4140, Telephone number (202) 708-1015; For parts 882 and 960: Ed Whipple, Director, Occupancy Division, Room 4206, telephone number (202) 708-0744; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing or speech-impaired individuals (TDD) is available at (202) 708-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

In accordance with section 644 of the Housing and Community Development Act of 1992 (approved October 28, 1992, Pub. L. 102–550; hereafter referred to as "1992 HCD Act"), this rule would amend the regulations for federally assisted housing programs to require that owners of federally assisted housing projects permit applicants for admission to submit with the application, the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization (hereafter sometimes referred to as "tenant assistance information"). The purpose of maintaining such information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

Section 683(4) of the 1992 HUD Act defines owner of federally assisted housing to mean the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in such housing.

Section 683(4) of the 1992 HCD Act defines federally assisted housing to mean:

(1) A public housing project, as such term is defined in section 3(b) of the U.S. Housing Act of 1937 (1937 Act);

(2) Housing for which project-based assistance is provided under section 8 of the 1937 Act;

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act of 1990 (NAHA);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of NAHA;

(5) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of the National Housing Act;

(6) Housing insured, assisted or held by the Secretary or a State or State agency under section 236 of the National Housing Act;

(7) Housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the 1937 Act, as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

The programs which are included in the definition of "federally assisted housing" and are therefore affected by this regulation are as follows:

1. Public Housing Program: Section 683(2)(A)

Section 3(b)(1) of the 1937 Act, defines a public housing project to mean housing developed, acquired or assisted by a public housing agency, and the improvements of any such project. The regulations governing the admission to and occupancy of public housing are set forth at 24 CFR part 960. Because Congress did not expressly make section 644 applicable to Indian Housing Authorities (IHAs), as required under section 201(b)(2) of the 1937 Act, IHAs are not covered by the statutory definition.

2. Project Based Section 8 Assistance: Section 683(2)(B)

The Department's programs that involve project based assistance under section 8 are as follows: (a) The section 8 New Construction Program, 24 CFR part 880; (b) the Section 8 Substantial Rehabilitation Program, 24 CFR part 881; (c) the Section 8 Project Based Certificate program, 24 CFR part 882, subpart G; (d) the Section 8 Moderate Rehabilitation program, 24 CFR part 882, subparts D and E; (e) the Section 8 Moderate Rehabilitation Single Rooms Occupancy program, 24 CFR part 882, subpart H; (f) the Section 8 State Housing Agencies program, 24 CFR part 883; (g) the Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; (h) the Section 202/8 Loans for Housing for the Elderly or Handicapped Program, 24 CFR part 885; (i) the Section 8 Loan Management Set Aside Program, 24 CFR part 886, subpart A; and (j) the Section 8 Property Disposition Set Aside Program, 24 CFR part 886, subpart C.

On February 24, 1993, the Department published a proposed rule for project-based assistance with funding under the Section 8 certificate program (24 CFR part 882, subpart G). Because the Department is currently revising subpart G in a separate rule making procedure, this rule would not amend 24 CFR part 882, subpart G. Rather, the Department will implement changes to 24 CFR part 882, subpart G, when it publishes the final rule implementing the February 24, 1993, proposed rule. (Unlike the section 8 housing certificate program, the section 8 housing voucher program involves only tenant based assistance. As such, it does not fall under the category of project-based Section 8 assistance, and this rule would not amend the regulations for the section 8 housing voucher program (24 CFR part 887).)

3. Section 202 Loans & Capital Advances: Section 683(2)(C)–(D)

Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of NAHA, refers to the Section 202 Supportive Housing for the Elderly Program (capital advance program). Regulations governing the Section 202 capital advance program are found at 24 CFR part 889.

Housing that is assisted under section 202 of the Housing Act of 1959, as it existed before the enactment of NAHA, refers to the Section 202 loan program. The Section 202 loan program covers loans for housing for the elderly and handicapped. Regulations for the Section 202 loan program appear at 24 CFR part 885. Regulations for the management of a Section 202 handicapped housing project with section 162 assistance appear at 24 CFR part 885, subpart C.

No regulations currently exist for the management of a Section 202 loan for the elderly housing project, Section 202 capital advance project or Section 202/8 loan for the handicapped housing project. On December 9, 1987 (52 FR 46614), the Department published a proposed rule which would add subpart B, containing the management regulations for Section 202 loans for elderly and handicapped to 24 CFR part 885. Subpart B will be published as a final rule in the near future. The Department also anticipates publishing an interim rule for the management of a section 202 capital advance project in the near future. The interim rule will add subpart F to 24 CFR part 889. Because 24 CFR part 885, subpart B and 24 CFR part 889, subpart F will be implemented before this rule is published as a final regulation, this proposed rule contains the modifications which the Department will make to subparts B (24 CFR 885.610) and F (24 CFR 889.610) to comply with section 644 of the 1992 HCD Act.

4. Below Market Interest Rate Loans (BMIR: Section 683(2)(E)

Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of the National Housing Act refers to below market interest rate (BMIR) loans. Regulations for BMIR loans appear at 24 CFR part 221.

5. Section 236 of the National Housing Act: Section 683(2)(F)

Projects which are insured or held by the Secretary under section 236 of the

National Housing Act are regulated by 24 CFR part 236, subparts A–C. (Subpart D only applies to those projects which receive rental assistance payments (commonly referred to as "deep subsidy"). Rental assistance payments are made to further assist tenants whose income is too low to permit the tenant to pay the approved Gross Rent with 30% of the tenant's Adjusted Monthly Income.)

With limited exceptions, the Department does not regulate housing which is assisted by a State or State agency under Section 236 of the National Housing Act (hereafter referred to as State financed, non-insured projects) by regulation. For most matters, the Department regulates State financed, non-insured projects contractually. (While the requirements for Subpart A do not explicitly apply to State financed, non-insured projects, the Department has applied the requirements of subpart A concerning income definition, rent calculations and admission restrictions to State financed, non-insured projects. Moreover, State financed, non-insured projects are eligible to receive rental assistance payments; and those that do, are regulated by 24 CFR part 236, subpart D.)

To make completely clear that the requirements of § 644 of the 1992 HCD Act apply to all section 236 projects, this rule would add a new subpart F, entitled "Designation of Tenant Assistant."

6. Section 8 Newly Constructed and Substantially Rehabilitated Housing: Section 683(2)(G)

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing. However, because all of the programs involving newly constructed and substantially rehabilitated housing are also project based section 8 assistance programs (listed in item two above), a discussion of the programs involving newly constructed or substantially rehabilitated housing is not provided in this preamble.

Other Federally Assisted Housing Programs

Although the term "federally assisted housing" as used in section 644 of the 1992 HCD Act does not encompass the Rent Supplement program (24 CFR part 215), the Indian Housing program (24 CFR part 905), and the Supportive Housing for Persons with Disabilities program (24 CFR part 890), the Department has decided to administratively include these programs in the section 644 implementing regulations. The Department believes that the enabling legislation for the Rent Supplement program, the Indian Housing program, and the Supportive Housing for Persons with Disabilities program authorize the Department to impose the requirements contained in section 644 on owners of projects in these other programs.

In enacting section 644, Congress seemed concerned with avoiding management problems encountered by PHAs and assisted housing managers. In this regard, Congress indicated that by allowing tenants to provide a contact person or organization in their applications for tenancy, project owners and managers could communicate with the tenant's contact person or organization in order to provide special care or assistance in resolving problems. See H.R. Rep. No. 102–760, 102d Cong., 2d Sess. 140.

The Department's longstanding policy is to treat tenants who are receiving similar program assistance under different programs as uniformly as possible. As with the types of housing listed in section 683(2) of the 1992 HCD Act, Rent Supplement, Indian Housing and Supportive Housing for Persons with Disabilities are programs designed to assist low-income tenants. The Department is aware of no significant basis for distinguishing these three programs from the other covered programs. In this regard, there is no logical basis for covering disabled families in projects with section 202 loans under the legislation, while excluding disabled families in projects with section 811 capital advances. Accordingly, this rule would also amend the regulations governing the Rent Supplement program, the Indian Housing program, and the Supportive Housing for Persons with Disabilities program.[1]

The statute and this rule give the applicant the choice of whether to submit the tenant assistance information with the application, and prohibits an owner from requiring the submission of such information by an applicant. However, when an applicant fills out an application, the owner must notify the applicant of his or her right to submit tenant assistance information. Future handbook guidance will provide instructions on this matter. However, this guidance will require that the tenant designate under what situations an owner may contact the tenant assistant. For example, one tenant may wish to have the tenant assistant contacted only in cases of medical emergency, while another tenant may want the tenant assistant contacted if the tenant is late on rent. As a final example, a homebuyer in the Indian Housing Mutual Help Homeownership Opportunity Program may want the tenant assistant contacted if the homebuyer is unable to perform routine maintenance on the home.

Under this rule, once an applicant submits tenant assistance information, an owner must then maintain that information with the applicant's application. Moreover, if the applicant becomes a tenant, the owner must maintain the tenant assistance information for as long as the tenant resides in the housing project. An owner is never obligated to obtain periodic updates to the tenant assistance information, and an owner may consider the tenant assistance information current, unless otherwise instructed by the tenant. However, this rule would require owners to periodically update the tenant assistance information when a tenant requests an update.

The statute and proposed regulation do not address the obligation of an owner to act upon any submitted tenant assistance information. The Department believes that owners should be allowed to exercise some judgment in determining when to use the tenant assistance information. At the same time, however, Congress obviously intended owners to use the tenant assistance information when appropriate. The Department is particularly interested in public comment on this issue, and will carefully consider any comments in deciding whether to impose by regulation an obligation on the owner to act upon tenant assistance information.

Finally, section 644 also requires that owners keep the tenant assistance information confidential. Accordingly, owners would be allowed to release the tenant assistance information only for the stated statutory and regulatory purpose: To assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

[1] No regulations currently exist for the management of a section 811 capital advance project. The Department anticipates publishing an interim rule for the management of a section 811 capital advance project in the near future. The interim rule will add subpart F to 24 CFR part 890. Because 24 CFR part 890, subpart F will be implemented before this rule is published as a final regulation, this proposed rule contains the modifications which the Department will make to subpart F.

Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule reflects a statutory requirement which applies to all owners of federally assisted housing, without regard to the size of entities involved.

F. Regulatory Agenda

This proposed rule was listed as sequence no. 1373 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24393) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance

Program number(s) are 14.103, 14.134, 14.135, 14.149, 14.156, 14.157, 14.181, 14.182.

H. Collection of Information

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following sections contain information collection requirements: §§ 215.26, 221.536b, 236.1001, 880.603, 881.603, 882.414, 883.704, 884.118, 885.610, 885.950, 886.119, 886.318, 889.610, 890.610, 905.302, and 960.212.

Estimated Annualized Costs

Government Costs

There are no costs to the government because the information collected is used solely by the organization collecting the data, i.e., the information is not reported to or analyzed by HUD.

Annualized Cost to the Respondents (Owners/Agents)

The average annual cost to the respondents (owners/managing agents) is based on 3 minutes to enter address on the application. The hourly cost is $7.00 per hour which includes overhead. The number of respondents (respondents at the time of application and recertification) is estimated to be 1% of the total number of units.

Annual No. of respondents	Cost per hour	Hours required	Total costs
54,714	$7.00	.05	$19,149

Burden estimates are based on the following number of units:

Office of Multifamily Housing and Office of Elderly and Assisted Housing

Note: under 24 CFR parts 890 and 889 units are under development, therefore, they are not reported below.

Section 8 (880, 881, 883, 884, 886A, 886C also includes 885): 1,645,777
Section 236: 360,541
RAP: 9,496
Rent Supplement: 42,278
Section 221(d)(3) BMIR: 113,164
Number of units: 2,171,256

Office of Native American Programs—24 CFR 905
Number of units: 79,085

Office of Community Planning and Development—24 CFR 882H
Number of units: 8,100

Office of Public Housing—24 CFR part 960
Public Housing: 1,728,164
Certificates/vouchers (882G and 887): 1,366,067
Moderate Rehabilitation (882D): 118,817
Number of units: 3,213,048

Total number of all units: 5,471,489

The number of respondents (respondents at the time of application and recertification) is estimated to be 1% of the total number of units.

Annual No. of respondents	Frequency of response	Hours required	Total hours
54,714	1	.05	2,735

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, 24 CFR parts 215, 221, 236, 880, 881, 882, 883, 884, 885, 886, 889, 890, 905, and 960 would be amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 would be revised to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. Section 215.26 would be added as follows:

§ 215.26 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 221 would be revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, 17151; 42 U.S.C. 13604.

4. Section 221.536b would be added to subpart C as follows:

§ 221.536b Designation of tenant assistant.

(a) *Applicability.* This section only applies to a project financed with a mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under section 221(d)(5) of such Act (BMIR loan).

(b) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(c) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(d) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(e) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

5. The authority citation for 24 CFR part 236 would be revised to read as follows:

Authority: 12 U.S.C. 1715b and 1715–1; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

6. A new subpart F would be added to part 236 to read as follows:

Subpart F—Applications for Admission

Sec.
236.1000 Applicability.
236.1001 Designation of tenant assistant.

Subpart F—Applications for Admission

§ 236.1000 Applicability.

This subpart applies to any housing project which is insured, assisted or held by the Secretary or a State or State agency under section 236 of the National Housing Act.

§ 236.1001 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, the following definitions apply.

(1) *Owner* means the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in the housing project.

(2) *Tenant assistance information* means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

7. The authority citation for 24 CFR part 880 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

8. Section 880.603 would be amended by revising paragraph (a) to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

9. The authority citation for 24 CFR part 881 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

10. Section 881.603 would be amended by revising paragraph (a) to read as follows:

§ 881.603 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any

relevant tenancy issues that arise during the tenancy of such tenant.

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PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

11. The authority citation for 24 CFR part 882 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 11401; 42 U.S.C. 13604.

12. Section 882.414 would be added to subpart D to read as follows:

§ 882.414 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(b) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

13. A new paragraph (b)(8) would be added to § 882.808 to read as follows:

§ 882.808 Management.

* * * * *

(b) * * *

(8) *Tenant assistance information.* Section 882.414 shall apply to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

14. The authority citation for 24 CFR part 883 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

15. Section 883.704 would be amended by revising paragraph (a) to read as follows:

§ 883.704 Selection and admission of assisted tenants.

(a) *Application*—(1) *Form.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish to the Agency or HUD copies of all applications received.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

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PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

16. The authority citation for 24 CFR part 884 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

17. In § 884.118, paragraph (c) would be added to read as follows:

§ 884.118 Responsibilities of the owner.

* * * * *

(c) *Designation of tenant assistant.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

18. The authority citation for 24 CFR part 885 would be revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

19. Section 885.610 would be added to read as follows:

§ 885.610 Selection and admission of tenants.

(a) [Reserved]

(b) *Application for admission*—(1) *Form.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Borrower and the applicant must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the Borrower must notify the applicant of the applicant's right to submit tenant assistance information with the application. A Borrower must accept as part of the application for admission tenant assistance information. However, a Borrower may not require that an applicant provide tenant assistance information.

(ii) A Borrower must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the Borrower must keep the tenant assistance information as long as the tenant resides in the housing project. A Borrower must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist a Borrower in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A Borrower must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a Borrower may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

20. Section 885.950 would be amended by revising paragraph (a) to read as follows:

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.*—(1) *Form.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the Borrower must notify the applicant of the applicant's right to submit tenant assistance information with the application. A Borrower must accept as part of the application for admission tenant assistance information. However, a Borrower may not require that an applicant provide tenant assistance information.

(ii) A Borrower must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the Borrower must keep the tenant assistance information as long as the tenant resides in the housing project. A Borrower must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist a Borrower in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A Borrower must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a Borrower may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

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PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

21. The authority citation for 24 CFR part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 1437f note; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

22. In § 886.119, paragraph (d) would be added to read as follows:

§ 886.119 Responsibilities of the owner.

* * * * *

(d) *Designation of tenant assistant.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

23. In § 886.318, paragraph (d) would be added to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) *Designation of tenant assistance.* (1) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(2) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(3) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(4) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

24. The authority citation for 24 CFR part 889 would be revised to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 3535(d); 42 U.S.C. 13604.

25. Section 889.610 would be added to read as follows:

§ 889.610 Selection and admission of tenants.

(a) [Reserved]

(b) [Reserved]

(c) *Application for admission*—(1) *Form.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant family must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistance.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

26. The authority citation for 24 CFR part 890 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 8013.

27. Section 890.610 would be added to read as follows:

§ 890.610 Selection and admission of tenants.

(2) [Reserves]

(b) *Application for admission*—(1) *Form.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces for a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant households must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(2) *Designation of tenant assistant.* (i) When an applicant fills out an application for housing, the owner must notify the applicant of the applicant's right to submit tenant assistance information with the application. An owner must accept as part of the application for admission tenant assistance information. However, an owner may not require that an applicant provide tenant assistance information.

(ii) An owner must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the owner must keep the tenant assistance information as long as the tenant resides in the housing project. An owner must update or change the tenant assistance information periodically if requested by the tenant.

(iii) The purpose of collecting tenant assistance information is to assist an owner in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. An owner must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(iv) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an owner may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

PART 905—INDIAN HOUSING PROGRAMS

28. The authority citation for 24 CFR part 905 would be revised to read as follows:

Authority: 42 U.S.C. 1437aa–1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

29. Section 905.302 would be added to subpart D to read as follows:

§ 905.302 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the IHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. An IHA must accept as part of the application for admission tenant assistance information. However, an IHA may not require that an applicant provide tenant assistance information.

(b) An IHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant or homebuyer, the IHA must keep the tenant assistance information as long as the tenant or homebuyer resides in the housing project. An IHA must update or change the tenant assistance information periodically if requested by the tenant or homebuyer.

(c) The purpose of collecting tenant assistance information is to assist an IHA in providing services or special care for such tenants or homebuyers, and in resolving issues that may arise during the tenancy of such tenants or homebuyers. An IHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section, tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which an IHA may use to assist in providing any services or special care for the tenant or homebuyer, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant or homebuyer.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

30. The authority citation for 24 CFR part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, and 1437n; 42 U.S.C. 3535(d); 42 U.S.C. 13604.

31. Section 960.212 would be added to subpart A to read as follows:

§ 960.212 Designation of tenant assistant.

(a) When an applicant fills out an application for housing, the PHA must notify the applicant of the applicant's right to submit tenant assistance information with the application. A PHA must accept as part of the application for admission tenant assistance information. However, a PHA may not require that an applicant provide tenant assistance information.

(b) A PHA must keep the tenant assistance information with the application. For any applicant who becomes a tenant, the PHA must keep the tenant assistance information as long as the tenant resides in the housing project. A PHA must update or change the tenant assistance information periodically if requested by the tenant.

(c) The purpose of collecting tenant assistance information is to assist a PHA in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants. A PHA must keep the tenant assistance information confidential, and may release or use tenant assistance information only for the purpose stated above.

(d) For purposes of this section tenant assistance information means the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization which a PHA may use to assist in providing any services or special care for the tenant, and to assist in resolving any relevant tenancy issues that arise during the tenancy of such tenant.

Dated: September 30, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25108 Filed 10–14–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 230

RIN 1010–AB90

Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts Under Federal Offshore Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to add new regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the Outer Continental Shelf Lands Act of 1953 (OCSLA). The proposed rules also describe the circumstances in which a person may recover certain payments that are not subject to section 10's requirements.

DATES: Comments must be received on or before December 14, 1993.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165. Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Paul A. Knueven, Technical Compliance Branch, Division of Verification, Royalty Management Program, MMS, Lakewood, Colorado, and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.

I. Background

(a) Reasons Why Excess Payments Occur on OCS Leases

Excess payments of royalties, rentals, bonuses, or other amounts made under OCS mineral leases may result for many reasons, including changes in factual circumstances, corrections of accounting or mechanical errors, and resolution of disputes. Changes in factual circumstances account for a major percentage of the excess payments that are made and often involve actions over which the payor has little or no control. Examples of these adjustments that frequently result in a decrease in royalties due include:

- Pricing changes attributable to "market-out" by the purchaser, settlement of contract disputes, well qualifications, etc;
- Changes in ownership or ownership percentages;
- Corrections of well-level allocations by producers;
- Corrections of sales volumes or quality adjustment factors by the purchaser;
- Federal Energy Regulatory Commission (FERC) approvals and orders.

Accounting errors cause a small percentage of the excess payments that royalty payors make. Training and supervision minimize payor errors; but

considering the large volume of information that is submitted each month, some random accounting errors are unavoidable, such as:

- Multiple input of the same run ticket;
- Miscalculation of a sales price bulletin;
- Clerical errors when entering data; or
- Use of incorrect code(s).

Mechanical malfunctions cause another small percentage of excess payments. Malfunctions of meters at various points in the market stream (e.g., at the lease or at the gas plant) account for most of these errors. Also, computer problems can cause reruns which result in excess payments.

Resolution of disputes also may result in excess payments having been made. Litigation between purchasers and sellers, FERC litigation, and other disputes may be concluded in a manner such that the royalty payor initially paid royalty on a value that was too high.

(b) Section 10 of the Outer Continental Shelf Lands Act (OCSLA)

Section 10(a) of the OCSLA requires that a request for refund or credit of an excess payment made in connection with any lease issued under that Act be filed with the Secretary of the Interior (Secretary) within 2 years after the making of the payment. Section 10(b) of the Act requires that all refunds or credits which the Secretary proposes to approve be reported to Congress, and that the Secretary wait at least 30 days while Congress is in continuous session before making a refund payment or authorizing a credit. Any repayment made pursuant to the Act must be without interest.

In 1981, the Solicitor of the Department of the Interior issued a published opinion interpreting section 10. *Refunds and Credits Under the Outer Continental Shelf Lands Act M-36942)*, 88 I.D. 1091 (December 15, 1981) ("1981 M–Opinion"). This 1981 M–Opinion reviewed the OCSLA's legislative history and addressed several fundamental issues involving section 10 including application of section 10 to both requests for refunds and credits (i.e., reducing a current month's royalty payment by the amount of a previous overpayment), the distinction between offsetting and crediting, and the meaning of section 10's 2-year limit. In 1993, the Solicitor issued a second M–Opinion.

Applicability of section 10 of the Outer Continental Shelf Lands Act, _____I.D. _____(Jan. 15, 1993) ("1993 M–Opinion"). This 1993 M–Opinion addressed transactions that are not subject to section 10's requirements.

The Interior Board of Land Appeals (IBLA) and the MMS Director also have issued decisions in administrative appeals construing section 10. Many different section 10 issues have been involved in these administrative appeals.

The purpose of these proposed regulations is to codify the Department's interpretation and application of section 10, incorporating the policies and decisions from the various legal opinions, administrative decisions, and administrative practice.

II. Section-by-Section Analysis

A section-by-section analysis of the proposed rule follows. Those provisions which are self-explanatory will not be discussed in detail.

Section 230.451. Scope

This section would explain that section 10 and the provisions of these rules apply only to Federal leases on the OCS. The procedures for recovering excess payments made with respect to onshore Federal and Indian leases are prescribed in an MMS Oil and Gas Payor Handbook and an MMS AFS Payor Handbook—Solid Minerals.

This section also would explain the long-established principle that the requirements of section 10 and these rules apply both to the refund requests and to credits, discussed in more detail below. The reasons why section 10 applies to both refunds and credits are explained in detail in the 1981 M–Opinion cited earlier.

Section 230.452. Definitions

This section of the proposed rule would provide that terms used in the rule would have the same meaning as in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1702, Therefore, terms such as "lease," "person" and "royalty" have the same meaning as in FOGRMA.

In addition, § 230.452 would include certain definitions expressly for purposes of these rules. Some of these terms are self-explanatory and will not be discussed further. A definition of "audit" was included in the proposed rules to clarify that there is a difference between an audit and other MMS review actions that are far more limited in scope and which do not have the same effect as an audit under other parts of this rule. The MMS currently is in the process of developing comprehensive audit regulations that will further clarify this distinction.

The term "credit" would be defined as a reduction of a current or future royalty or other payment made in connection with an OCS lease as a result of reporting a "credit adjustment," another defined term. A credit adjustment would mean any adjustment on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment reported and paid in any previous period. Thus, if a royalty payor initially reports that it owed $150 in royalties on 1000 Mcf of gas production in January 1992, and 6 months later reports an adjustment reducing that report to $125, that is a credit adjustment. If the credit adjustment further results in reducing the royalties that the payor pays in the current month by $25, then the payor will have taken a credit. As explained in more detail below, not all credit adjustments result in credits. The reasons why section 10 applies to credits and certain credit adjustments are explained in the 1981 M–Opinion.

The term "offset" would mean to net or cancel previous overpayments against previous underpayments on the same OCS lease or unit. Thus, if a royalty payor discovered in March 1992 that it overpaid royalties on an OCS lease by $500 in November 1991 and underpaid by $700 in December 1991, the payor could offset the $500 overpayment against the $700 underpayment and only pay $200 additional royalty plus interest, with no implication under section 10. Limitations on offsets, an issue involving more than OCS leases, are addressed in a separate proposed rulemaking, "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

The term "recoup" or "recoupment" would mean to recover a previous overpayment through a credit against a current or future royalty or other payment liability. In the example described above for "credit adjustments," the payor would be recouping its $25 overpayment.

The term "refund" would mean an actual repayment by the United States Treasury, usually by check or electronic funds transfer.

Section 230.453. Request for Refund or Credit

This section would establish the procedure a person must follow to recover an excess payment made in connection with an OCS lease unless an excess payment may be used as an offset pursuant to § 230.456, discussed below, or unless the transaction is not subject

to section 10, as provided in § 230.461, also discussed below.

Unless a transaction meets one of the other express exceptions in these rules paragraph (a) of § 230.453 would provide that no person may recover an excess payment he/she made in connection with an OCS lease unless:

- That person has made a request for refund or credit in accordance with § 230.453(b);
- The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives, and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b) (i.e., if Congress goes out of session, the payment shall not be made or the credit may not be authorized until 30 days after the opening of the next session of Congress); and
- MMS gives the person notice that the request for refund is approved or a credit is authorized.

Paragraph (b) of § 230.453 would prescribe what a request for refund or credit must include, such as:

(1) The request must be in writing. An oral request would not be acceptable.

(2) The person must provide its MMS established payor code. This would ensure that the request for refund or credit is made by the person who has a legal right to a refund or recoupment.

(3) The person must identify the leases and sales months with respect to which the excess payments occurred.

(4) The person must identify the amount of the excess payment. MMS recognizes that in some situations it is not possible to determine an exact amount, for example, if there is a pending administrative or judicial proceeding that will establish the amount. In those situations, it would be acceptable to describe the class of payments that may be excess.

(5) The person must provide the reasons why a refund or credit is due. This requirement, together with the two previous requirements are intended to stop the practice of some payors of filing a "generic" refund request with every monthly royalty payment in the event they later determine that some part of their payment is excess. Such a nonspecific request would not be acceptable as a request for refund or credit under these rules.

(6) Because a request for refund or credit results in a reduction in revenues for the Treasury, MMS wants to ensure that such requests are not filed frivolously. Therefore, the proposed rules require that the person submitting the request for refund or credit must certify that, to the best of their knowledge or belief, the information on the request is accurate and complete.

Pursuant to paragraph (c) of § 230.453, if MMS determines that the request for refund or credit is not complete, the person who submitted the request would be given notice and allowed 30 days, or such time as MMS may specify, to supplement its request.

Under paragraph (d) of § 230.453, a credit adjustment reported on a Form MMS–2014 does not constitute a request for refund or credit; nor does it constitute an incomplete request for purposes of paragraph (c) of § 230.453. Therefore, as discussed further below, the filing of a credit adjustment would not stop or toll the running of the 2-year period in section 10. Moreover, if MMS discovers an unauthorized credit and more than 2 years had then passed since the making of the excess payment, the person will be required to repay the amount recouped plus interest, and will be time-barred from filing a proper request for refund or credit. Comments on the question of whether filing of a credit adjustment should toll the running of the 2-year period are requested below.

Payors also should be aware that if a credit is unauthorized, substantial sanctions may result because of the improper recoupment of monies. As explained below, MMS is proposing to establish assessments for each unauthorized credit. Further, in appropriate circumstances, MMS may consider assessment of civil penalties pursuant to section 109 of FOGRMA, 30 U.S.C. 1719, and MMS regulations of 30 CFR part 241. Civil penalties would be especially appropriate for persons who continue to take unauthorized credits following express notice from MMS that such a practice is unlawful.

Paragraph (e) of § 230.453 would provide that a person could amend its request if two conditions are met. First, the additional amount must be for a lease and sales month already covered by the initial request. Also, the reason for the excess payment for the additional amount must be the same as for the originally requested amount. These conditions are intended to prevent a person from circumventing the requirements of section 10 and these rules by filing a request for refund or credit to stop the running of the 2-year period and then continually amending it.

Paragraph (f) of § 230.453 would reflect the well-established principle that section 10(a) requires that MMS receive the request for refund or credit within 2 years of the date MMS received the excess payment. Royalty payors and other should understand that MMS always has construed this requirement strictly. Therefore, the request for refund or credit must be received within 2 years of the date the excess payment was received, not within 2 years of when some action, such as an administrative or judicial determination, occurred which made the payment excess. See, *Chevron U.S.A., Inc.* v. *United States*, 923 F.2d 830 (Fed. Cir. 1991), cert. denied sub nom. *Pennzoil Co.* v. *United States*, 112 S.Ct. 167 (1992).

As explained further below, the 2-year period does not limit offsetting. Also, there are certain actions which stop or toll the running of the 2-year period that are addressed in a later section of this preamble.

Paragraph (f)(1) of proposed § 230.453 provides the MMS address where the request for refund or credit must be received. If a request is sent to the wrong address MMS will not consider it "received" until it reaches the correct location. Under the proposed rules no grace period will be provided. Thus, it is the submitter's sole responsibility to ensure that the request is "received" at the proper MMS address within the prescribed time. Paragraph (f)(2) would clarify that if the last day of the 2-year period falls on a Saturday, Sunday, holiday or other non-business day (e.g., a snow day that closes the office), then the last day of the 2-year period is the next business day. Paragraph (f)(2) also would provide that requests received after 4 p.m. Mountain Time are next day receipts.

Section 230.454. Interest on Excess Payments

Section 10(a) provides that if a person makes an excess payment, "such excess shall be repaid without interest * * *" Section 230.454 would incorporate the statutory bar on interest payments in the regulations.

Section 230.455. Authorization of Refund or Credit and Subsequent Audit.

When a person requests a refund or credit, it is not possible or practicable for MMS immediately to conduct an audit to determine if the request is justified. MMS will verify that the amount sought to be recovered actually was paid before approving a request. MMS will review the propriety of requests for refund or credit when MMS reviews those transactions in the course of a regular audit cycle. If a later audit or other review results in a conclusion that a request for refund or credit was improper and should not have been approved, the person will be required to repay the previously recovered amount plus interest at the FOGRMA rate

pursuant to 30 CFR 218.150 from the date of the improper recoupment until the date of repayment.

Section 230.456. Offsets of Overpayments and Underpayments on the Same Lease (or Unit) by the Same Person

Section 230.452 defines "offset" as the netting or canceling of previous overpayments against previous underpayments. An offset is distinguished from a credit in that a credit reduces a current or future month's royalties due. In the 1981 M-Opinion, at p. 1103, the Solicitor recognized that offsetting overpayments against underpayments discovered during an audit to determine a net overpayment or underpayment, even where the overpayments were more than 2 years old, is not prohibited under section 10. See also, *Shell Oil Co.*, 52 IBLA 74 (1981). In the 1993 M-Opinion, the Solicitor again recognized that offsetting by a single person between past sales months on the same lease is not subject to section 10 to the extent the person is not recouping a net overpayment against current month's royalties due. See 1993 M-Opinion at section II.B and II.E. Consistent with these previous interpretations, the proposed rules provide that if a person makes an overpayment on an OCS lease (or unit) in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease (or unit) for the same or a different product without submitting a request for refund or credit, subject to certain limitations and conditions.

The overpayment may not be offset against an underpayment created as a result of a credit adjustment that was reported to recoup the amount of the overpayment, or against any other intentionally created underpayment. For example, assume a payor overpays on Lease A by $5,000 in January 1992 and then reports a credit adjustment (without MMS approval) for $5,000 in April 1992 to recoup the overpayment. When MMS discovers that credit adjustment and requires that it be repaid, the payor would not be permitted to assert the overpayment as an offset. Otherwise, section 10 would be rendered totally meaningless because every underpayment created by an unauthorized credit adjustment would be offset 100 percent by the previous overpayment sought to be recouped. Disallowing offsets of overpayments against underpayments created by unauthorized credit adjustments was recognized and adopted by the Secretary and the Office of Hearings and Appeals. (See, *Forest Oil Corp.*, 9 OHA 68 (1991); *Mesa Operating Limited Partnership*, MMS-88-0182-OCS, 98 I.D. 193 (1990).

Time and other limitations on offsets are addressed in a separate proposed rulemaking recently issued, titled "Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases," (58 FR 43588), August 17, 1993.

Section 230.457. Offsets Among Different Persons Who Reported and Paid Royalties on a Lease for the Same Prior Sales Month

Proposed § 230.457 applies to situations where an operator's amended production report, or other circumstance, results in a reallocation of production for a prior sales month among the different persons who reported and paid royalty for that month on a lease or unit. However, this section would not apply to reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b), discussed below.

Paragraph (b) of § 230.457 would provide that, in the event of a reallocation, the respective affected payors generally could reconcile any royalty consequences among themselves without filing any reports or requests for refund or credit with MMS. However, any person who remained net overpaid after the reconciliation would be required to file a request for refund or credit with MMS to recover the overpayment. Similarly, if any person remained net underpaid after the reconciliation, that person would owe the deficiency plus interest.

By way of illustration, assume that for June 1992 an operator originally allocates 20 Mcf of gas to Payor A and 80 Mcf of gas to Payor B and royalty is paid on that basis. Six months later, the operator changes the allocation so that Payor A was entitled to 30 Mcf of gas and Payor B was entitled to 70 Mcf. It would not be necessary for Payor A to amend its royalty reports and pay royalty on the additional 10 Mcf plus interest and for Payor B to submit a request for refund or credit. Instead, Payor A could reimburse Payor B directly for the royalties already paid. No revised royalty report (MMS-2014) to MMS is required; however, the payors should document the transaction for the MMS auditors to verify later. Changes to production volumes must be reported in accordance with the regulations at 30 CFR part 216—Production Accounting.

If, in the above example, Payor B had a higher priced gas sales contract than payor A, then Payor B would have to submit a request for refund or credit within 2 years of making the original payment in order to recover the net overpayment. If Payor B's gas sales price was lower than Payor A's, then the additional royalties plus interest must be reported and paid to MMS.

Section 230.458. Unauthorized Credit Adjustments

This section would clarify for royalty payors and other persons the consequences of reporting a credit adjustment on a Form MMS-2014 to recoup an overpayment prior to MSS approval, unless the transaction is not subject to section 10, as explained below in the discussion of the proposed § 230.461.

If the unauthorized credit adjustment recouped an excess payment made more than 2 years before the date MMS receives the Form MMS-2014, which includes the unauthorized credit adjustment, then the person will be required to repay the amount recouped plus interest from the date of the recoupment to the date it is repaid. Since more than 2 years has passed since the making of the excess payment, the person will be barred from recovering the overpayment, unless that person had previously filed a separate request for refund or credit.

If the unauthorized credit adjustment was reported to MMS within 2 years of the date the excess payment was made, the amount recouped also must be repaid with interest. As explained further below, the report of the unauthorized credit adjustment would not be acceptable under these regulations as a request for refund or credit and would not stop the running of the 2-year period in section 10(a). Thus, the person would be required to file a request for refund or credit for the original excess payment which would only be subject to MMS review and approval if it is received within the 2-year period following the making of the excess payment.

Proposed § 230.458(b) imposes an assessment of $500 for each unauthorized credit adjustment reported to MMS on a Form MMS-2014. When a person takes an unauthorized credit adjustment, the MMS Royalty Management Program incurs costs to detect the credit adjustment and process the corrective actions. Those costs are not readily quantifiable. Thus, MMS is proposing the $500 assessment in the nature of a liquidated damage.

Section 230.459. Stopping or Tolling of the Section 10(a) 2-year Period

Section 10(a) requires that a request for refund or credit must be filed within

2 years of the making of the excess payment. This section describes the actions that will stop or toll the running of the 2-year period.

Obviously, a complete request for refund or credit will stop the running of the 2-year period. The rule also would provide that a "substantially complete" request, i.e., one for which the MMS would allow supplementation, as discussed above, is sufficient to toll the running of the 2-year period.

There are some circumstances where MMS will recognize that a pending administrative or judicial action could result in a large number of requests for refund or credit. In these situations, MMS could issue a notice, published in the **Federal Register** tolling the running of the 2-year period for the time specified in the notice. This action would eliminate the need for every payor to file a request for refund or credit or a tolling notice, described below, until the administrative or judicial action, or other action, is complete and the amounts of any excess payments can be determined.

A lessee or group of lessees may request MMS approval to form a unit or to modify a unit. The consequence of MMS approval, which is effective as of the application date, often is reallocation of production among the leases. So that the lessees will not be prejudiced in the event MMS takes more than 2 years to review and approve the lessees' request, MMS would treat the application as stopping the running of the 2-year period.

In some circumstances a person may become aware of a pending administrative or judicial action, or other action, that may affect its royalty obligation. However, the person cannot determine yet exactly what the impact will be. Paragraph (a)(4) of § 230.459 would allow that person to file a tolling notice with MMS setting forth sufficient detail regarding the affected leases, the estimated dollar impact, and the nature of the pending action.

Paragraph (b) of § 230.459 would provide that a request for refund or credit filed by one person who made an excess payment on a lease does not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on the lease. Thus, if an operator discovered a metering error that caused it to overstate volumes produced on a lease, and if the several working interest owners on the lease each reported and paid royalties separately, then a request for refund or credit by one of these payors would not stop or toll the running of the 2-year period for the other payors on the lease.

As explained above, it is MMS's principal proposal that the filing of a credit adjustment on a Form MMS–2014 does not constitute a request for refund or credit or even an incomplete request for refund or credit. Consequently, the report would not, under the rule as proposed, stop or toll the running of the 2-year period. Thus, if more than 2 years passes between the time the payor made the excess payment and when MMS gives notice that the credit adjustment is unauthorized, the person would be required to repay the recouped amount plus interest and would be barred from recovering its excess payment because of section 10(a)'s 2-year limit. The MMS recognizes, that in some circumstances, this could result in large sums of excess payments never being recoverable. This result would occur even if the initial credit adjustment was filed within 2 years. The MMS therefore would like comment on whether the filing of a credit adjustment should be considered sufficient notice so as to at least toll the running of the 2-year period in section 10(a). The payor still would be required to repay the improperly recouped amount plus interest, but would not be prevented from thereafter filing supplemental information to complete its request for refund or credit to recover its excess payment.

Section 230.460. Lease Suspension

The MMS may suspend operations on an OCS lease pursuant to 30 CFR 250.10(b)(6). If a lease is suspended, rentals are not owed for the period of the suspension. Since rentals are paid in advance, the lessee is entitled to a refund of its overpaid rentals following suspension and could submit a request for refund or credit. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment would not be subject to refund, recoupment, or credit against future rentals due on the same lease. The MMS recognizes that disallowing crediting against future rentals owed on the same lease is a departure from IBLA decisions in cases such as *Tenneco Oil Co.*, 117 IBLA 120, and *Shell Offshore, Inc.*, 117 IBLA 125 (1990). However, under the proposed rule, such a practice would be a credit. Therefore, section 10, including the 2-year limitation, would apply.

Section 230.461. Transactions Not Subject to Section 10

There are certain royalty and other payment-related transactions involving OCS leases that are not subject to section 10. Therefore, recovering an overpayment in these situations does not require following the section 10 process of filing a request for refund or credit and awaiting approval. For most of the transactions identified in proposed § 230.461, the reasons why section 10 is not applicable are discussed in substantial detail in the 1993 M-Opinion. Also, on December 10, 1991 and January 15, 1993, the MMS Director issued "Dear Payor" letters explaining that section 10 does not apply to these transactions.

Paragraph (a) of § 230.461 would provide that section 10 does not apply where a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease makes an excess payment. Section 10 does not apply because the payment is made pursuant to the sales contract, not a lease.

Paragraph (b) of § 230.461 addresses the situation where MMS approves a unit agreement or a revision to a unit. It would provide that a person may reallocate production among its affected leases within the time period MMS prescribes. As explained in the 1993 M-Opinion, since the unit in effect supersedes the individual leases, the reallocation does not result in any overpayment on the "lease." It is merely a reporting issue. Of course, to the extent that the reallocation does result in a net reduction in the royalties previously paid, then the person must file a request for refund or credit. If more than 2 years has passed since the original payment was made, the refund or credit still would be allowed since, as noted above, MMS would treat the application for unitization as stopping the running of the 2-year period.

Paragraph (c) of § 230.461 would allow a person to adjust volume and royalty reports among OCS leases within a unit without filing a request for refund or credit. Again, the rationale is that the unit replaces the individual lease so that the adjustments are considered to be within a lease and there is no excess payment. The adjustment would not be limited to the same sales month since cross-month adjustments within a unit are "offset" to the same extent as offsets among past months within an individual lease.

Paragraph (d) of § 230.461 would provide that section 10 does not apply where a person pays more money than the total royalty due reported on a Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct. As explained in the 1993 M-Opinion in section II. F., the excess payment cannot be associated with any specific lease, unless the payor is reporting for only one lease. So if the payor is reporting for more than one lease, it may request a refund of the

overpaid amount or the payor may contact MMS on how to apply the overpaid money to a subsequent royalty report. The payor cannot take a credit for the overpayment since the amount was not reported with respect to a lease.

Paragraph (e) of § 230.461 would provide that a person may reduce its MMS-established estimate balance for a lease product by requesting a refund or a credit that is not subject to section 10. See section II.G. of the 1993 M-Opinion for a complete explanation of why section 10 does not apply to this transaction.

Paragraph (f) of § 230.461 would provide that if adjustment of an estimated oil transportation allowance (30 CFR 206.105(e)), estimated gas transportation allowance (30 CFR 206.157(e)), or estimated gas processing allowance (30 CFR 206.159(e)) results in an overpayment for any sales month because the estimated transportation or processing costs were less than the actual costs, a person may request a refund or credit of the overpayment that is not subject to section 10. See section II. H. of the 1993 M-Opinion for the explanation of why section 10 is not applicable to this transaction.

However, if the payor makes an error in its original report of actual transportation or processing costs, any subsequent adjustment would be subject to section 10. For example, the payor estimates its oil transportation allowance at $.25 per barrel. When it submits its adjustment from estimate to actual, it reports an allowance of $.30 per barrel and recoups the $.05 per barrel without section 10 being applicable. If the payor discovers 6 months later that it made an error and that its actual transportation cost was $.40 per barrel, the recoupment of the additional $.10 per barrel would be subject to section 10 and the reporting and approval requirements of these rules.

Paragraph (g) of § 230.461 would provide that payment pending appeal or judicial review of an MMS order to pay does not implicate section 10 if the payor prevails. This is so because provisional payment pursuant to a disputed order is not an "excess payment" within the meaning of section 10 for reasons similar to those set forth in the 1993 M-Opinion with respect to estimated transportation and processing allowances.

Paragraph (h) of § 230.461 would provide a de minimis exception. MMS recognizes that in the process of reporting tens of thousands of lines of royalty data, minor adjustments necessarily occur. It is not worth MMS' efforts in terms of money or personnel to process section 10 filings for small amounts. Accordingly, MMS approval would not be required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, section 10's 2-year limit still is applicable. Thus, even if a payor used this exception to avoid section 10's reporting requirements, the most it could recover for any lease is $600 (24 months x $25).

The MMS would like comments on an alternative for a de minimis provision. Under the alternative, a person could not submit a request for refund or credit unless the aggregate amount sought to be refunded or credited exceeds $100. Thus, if a person found a $50 overpayment, it could not request a refund or credit of that amount unless there were additional overpayments, on the same or different leases, that in total exceeded $100.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESS** section of this preamble. Comments must be received on or before the date identified in the **DATE** section of this preamble.

Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule will establish procedures to implement section 10 of the OCSLA and does not include any substantive change to procedures that have been followed by MMS relative to refund or credit of excess payments under OCS leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally-protected rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that the rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements of this rule are being submitted to the Office of Management and Budget for approval.

National Environment Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(c)).

List of Subjects in 30 CFR Part 230

Coal, Continental shelf, Electronic Funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 230 is proposed to be amended as follows:

PART 230—ROYALTY REFUNDS

1. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720 A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new subpart J is added under part 230 to read as follows:

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

Sec.
230.451 Scope.
230.452 Definitions.
230.453 Request for refund or credit.
230.454 Interest on excess payments.
230.455 Authorization of refund or credit and subsequent audit.
230.456 Offsets of overpayment and underpayments on the lease (or unit) by the same person.
230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.
450.458 Unauthorized credit adjustments.
230.459 Stopping or tolling of the section 10(a) 2-year period.

Sec.
230.460 Lease suspension.
230.461 Transactions not subject to section 10.

Subpart J—Refunds and Recoupments of Overpayments Under Federal Leases on the Outer Continental Shelf; Implementation of Section 10 of the Outer Continental Shelf Lands Act

§ 230.451 Scope.

This subpart establishes the procedures that lessees and other persons who make royalty and other payments on Federal oil and gas leases on the Outer Continental Shelf (OCS) must follow to recover certain excess payments made in connection with their leases in accordance with section 10 of the Outer Continental Shelf Lands Act (section 10), 43 U.S.C. 1339. The requirements of this subpart apply to both requests for refund from the Treasury of excess payments and requests to recover excess payments by recouping the amount through a credit adjustment. This subpart applies only to Federal leases on the OCS.

§ 230.452 Definitions.

Terms used in this subpart shall have same meaning as in 30 U.S.C. 1702. In addition, the following definitions apply to this subpart:

Audit means a procedure for verifying for a prescribed time period whether financial reports and production reports and related items, such as elements, accounts, or funds, are fairly presented, whether financial information is presented in accordance with established or stated criteria, and whether the auditee has adhered to specific financial compliance requirements, including but not limited to those specified in lease terms, mineral leasing laws, regulations of the Department of the Interior, orders, and other applicable laws and regulations. An audit includes a review of internal controls and systems and both compliance and substantive testing.

Credit or *crediting* means reduction of a current or future royalty or other payment made in connection with a lease as a result of reporting a credit adjustment.

Credit Adjustment means any adjustment reported on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment made in connection with a lease which was reported and paid in any previous period.

Offset means to net or cancel previous overpayments against previous underpayments on the same OCS lease or across lease boundaries if all the individual leases are part of an approved unit agreement.

Overpayment means any payment made in excess of the amount that the lessee was lawfully required to pay.

Payment means money MMS receives in satisfaction of a lessee's royalty, rental, bonus, net profit share, or late payment interest obligation as established by statute, regulation, or the terms of a lease.

Recoup or *recoupment* means to recover a previous overpayment through a credit against a current or future royalty or other payment or liability under an OCS lease. A recoupment occurs whenever a payor reports a credit adjustment on a Form MMS–2014 or other royalty report form resulting in a net negative dollar value for the transaction and the credit is taken against the royalty or other payment or liability shown in the balance of the report.

Refund means a repayment by the United States Treasury to a person of any overpayment.

Unit means a area of 2 or more leases subject to an agreement for the consolidated development and recovery of oil and gas contained on the leases which are part of the agreement approved by MMS.

§ 230.453 Request for refund or credit.

(a) Except as otherwise provided in this subpart, no person may recover an excess payment it has made in connection with an OCS lease unless:

(1) That person has made a request for refund or credit in accordance with the provisions of this subpart;

(2) The MMS has transmitted a report on the request for refund or credit to the President of the Senate and the Speaker of the House of Representatives and 30 days from such submission has expired in accordance with section 10(b), 43 U.S.C. 1339(b); and

(3) The MMS notifies the person that its request for refund or credit is authorized and that the person may receive its refund for, or may report a credit adjustment to recoup, the excess payment.

(b) A request for refund or credit must:

(1) Be in writing;

(2) Provide the person's MMS-established payor code;

(3) Identify the leases and sales months with respect to which the excess payments occurred;

(4) Identify the amount of the excess payment or, with specificity, describe a class of payments that are, or as a result of an administrative or judicial decision or other identified contingency may become, excess payments;

(5) Provide the reasons why a refund or credit is due;

(6) Include a certification that, to the best of the person's knowledge or belief, the information provided in response to paragraphs (b)(2) through (b)(5) of this section is accurate and complete.

(c) If MMS determines that a request for refund or credit is incomplete, the person who submitted the request shall have 30 days, or such time as MMS may specify, following notice from MMS, to supplement the request for refund or credit.

(d) A credit adjustment reported on a Form MMS–2014 shall not constitute a request for refund or credit for purposes of this section, and shall not constitute an incomplete request for refund or credit for purposes of paragraph (c) of this section.

(e) A person who has filed a request for refund or credit pursuant to this section may amend that request to add an additional amount if:

(1) The additional amount is for the same lease and sales month; and

(2) The reason for the excess payment for the additional amount is the same as for the originally requested amount.

(f) Except as otherwise provided in this subpart, no request for a refund or credit shall be approved unless the request is received at MMS at the address provided in paragraph (f)(1) of this section within 2 years of the date that MMS received the excess payment.

(1) The request for refund or credit must be received at the following address:

(i) By mail: Minerals Management Service, Royalty Management Program, P.O. Box 173702, MS 3933, Denver, CO 80217–3702.

(ii) By express delivery or courier: Minerals Management Service, Section 10 Refund Requests, Building 85, Denver Federal Center, MS 3933, room A–212, Denver, CO 80225.

(2) If the last day of the 2-year period from the date MMS received the excess payment falls on a Saturday, Sunday, holiday or any other day that MMS is not open for business at the address specified in paragraph (f)(1) of this section, then the last day of the 2-year period shall be the next regular business day. Requests received at the specified MMS address after 4 p.m. Mountain Time are considered received the following business day.

§ 230.454 Interest on excess payments.

No person shall be entitled to interest on any excess payment made in connection with a lease that is refunded or recouped pursuant to this subpart.

§ 230.455 Authorization of refund or credit and subsequent audit.

The MMS may grant a refund or authorize a credit based upon satisfactory evidence that the payment subject to the request was made, and upon a determination that the payment was excess. An approved request for refund or credit may be subject to later review or audit by MMS. If, based upon later review or audit, MMS determines that the refund or recoupment should not have been granted or authorized, the person who requested the refund or credit shall repay the amount refunded or recouped plus interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the refund was made or the recoupment taken until the date it is repaid.

§ 230.456 Offsets of overpayments and underpayments on the same lease (or unit) by the same person.

If a person makes an overpayment on any OCS lease or unit in a prior month, it may offset that overpayment against an underpayment that same person made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit, if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment, or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment, and subject to any limitations imposed by other applicable law or regulations.

§ 230.457 Offsets among different persons who reported and paid royalties on a lease for the same prior sales month.

(a) This section is applicable where an operator's amended production report or any other action results in a reallocation of production for a prior sales month among different persons who reported and paid royalty for that month on a lease or unit, except for reallocations of production that result from the approval or amendment of a unit agreement subject to § 230.461(b).

(b) In the event of a reallocation of production as described in paragraph (a) of this section, the respective persons who reported and paid royalty may reconcile any resulting differences in royalty payment obligations between themselves without submitting revised royalty reports or requests for refund or credit to MMS under this subpart, except that:

(1) Any person who paid any amount which remains as a net overpayment after such reconciliation must file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment;

(2) Any person whose royalty obligation remains underpaid after such reconciliation must report the additional royalties due for the prior sales month on a Form MMS–2014 and pay interest on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid; and

(3) All persons involved in such reconciliation must retain all documents pertaining to the reallocation of production, calculation of royalties due, and the subsequent reconciliation among the persons involved together with other records pertaining to production from that lease during the prior sales month and the royalty due and paid thereon, and make such documents available for review and audit in the same manner as other records pertaining to the lease.

(c) If persons who reported and paid royalty do not reconcile between themselves any differences in royalty payment obligations arising as a result of a reallocation as provided in paragraph (b) of this section, each person who pays royalties for the lease must report and pay any additional royalties due, or file a request for refund or credit in accordance with the requirements of this subpart to recover the excess payment, as applicable. Any person who reports additional royalties due for the prior sales month must pay interest pursuant to 30 CFR 218.54 on the underpayment from the last day of the month following the sales month until the date the additional royalties are paid.

§ 230.458 Unauthorized credit adjustments.

(a) If a person reports a credit adjustment on Form MMS–2014 that results in a credit before MMS approves the recoupment pursuant to § 230.455, and if the credit adjustment does not qualify as one of the transactions not subject to section 10 as provided in § 230.461, then that person has taken an unauthorized credit adjustment.

(1) If the unauthorized credit adjustment recouped a payment that MMS received more than 2 years before the date MMS received the Form MMS–2014, which includes the unauthorized credit adjustment, the person shall repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. Unless the person filed a request for refund or credit pursuant to § 230.453 within 2 years of the making of the excess payment for which the unauthorized credit adjustment was reported, the excess payment shall not be subject to refund or recoupment.

(2) If the unauthorized credit adjustment recouped a payment that MMS received less than 2 years before the date MMS received the Form MMS–2014 with the unauthorized credit adjustment, the person shall be required to repay the amount recouped plus late payment interest determined pursuant to 30 U.S.C. 1721(a) and 30 CFR 218.150 from the date the unauthorized recoupment was taken until the date it is repaid. The report of the unauthorized credit adjustment on the Form MMS–2014 does not constitute a request for refund or credit that tolls the 2-year period in section 10(a), 43 U.S.C. 1339(a). The person may file a request for refund or credit pursuant to § 230.453 for the payment for which the unauthorized credit adjustment was reported. The MMS will review the request pursuant to the requirements of this subpart only if the request for refund or credit is received within 2 years of the making of the original payment for which the unauthorized credit adjustment was reported.

(b) A person who reports an unauthorized credit adjustment to MMS on a Form MMS–2014 shall be assessed $500 for each unauthorized credit adjustment reported on the Form MMS–2014.

§ 230.459 Stopping or tolling of the section 10(a) 2-year period.

(a) The period of 2 years from the making of the excess payment, within which a request for refund or credit must be filed under section 19(a), 43 U.S.C. 1339(a), shall be:

(1) Tolled by MMS' receipt of a substantially complete request for refund or credit pursuant to § 230.453; or

(2) Tolled by a general tolling notice issued by MMS and published in the **Federal Register** in circumstances where MMS believes a substantial number of requests for refund or credit could result as a consequence of a pending administrative or judicial proceeding or other action. The running of the 2-year period shall be tolled for the time period specified in the notice; or

(3) Stopped by an application for unitization of OCS leases with respect to any excess payment that may result from the reallocation of production among leases after the unit is approved; or

(4) Tolled by a notice filed by a person at the address stated in § 230.453(f) stating that a specifically

identified action or proceeding may result in payments made on an OCS lease becoming excess payments. The notice must include:

(i) A list of affected leases and sales months;

(ii) The specific action or proceeding that could result in payments becoming excess;

(iii) An estimate of the amount that could be subject to a request for refund or credit; and

(iv) The person's MMS-established payor code.

(b) A request for refund or credit that is timely filed by a person who made an excess payment on an OCS lease shall not stop or toll the running of the 2-year period with respect to any excess payment made by any other person on that lease.

§ 230.460 Lease suspension.

If MMS suspends an OCS lease pursuant to 30 CFR 250.10(b)(6), a person who has made excess rental payments for the period of suspension, may request a refund or credit of any excess payments pursuant to this subpart. If the request for refund or credit is filed more than 2 years after MMS received the excess rentals, the excess payment shall not be subject to refund, recoupment, or credit against future rentals due on the same lease.

§ 230.461 Transactions not subject to section 10.

(a) A request for refund of, or any other action to recover, excess payments made by a refiner/purchaser under a royalty-in-kind contract for royalty oil produced from an OCS lease is not subject to section 10.

(b) If MMS approves a unit agreement on the OCS, or a revision to a unit, a person may file amended Forms MMS–2014 within the time period MMS prescribes, reallocating production among the affected leases. A person must file a request for refund or credit pursuant to this subpart only if, and to the extent that, there is a net reduction in the royalty that person previously paid for the leases committed to the unit as a result of the amendments.

(c) A person may amend its Form MMS–2014 to adjust volume and royalty reports among OCS leases within a unit within the same sales month without filing a request for refund or credit pursuant to this subpart, except that a request for refund or credit must be filed to the extent that there is a net reduction in the royalty previously paid for the leases committed to the unit as a result of the amendments.

(d) A person who pays more money than the total royalty due as reported on the Form MMS–2014 accompanying the payment, where all amounts reported on the Form MMS–2014 are correct, may submit a request for refund of the overpaid amounts. The request for refund is not subject to section 10's requirements unless the Form MMS–2014 includes reports for only one OCS lease. Any overpayment subject to this paragraph shall not be recovered by recoupment.

(e) A person may reduce an estimate balance, established for any lease product pursuant to MMS instructions, by submitting a credit adjustment on a Form MMS–2014, or a request for refund, for all or part of the established estimate balance. A credit adjustment or request for refund to recover all or part of an estimate balance authorized by this paragraph is not subject to the requirements of section 10.

(f)(1) If adjustment of an estimated oil transportation allowance or estimated gas transportation allowance pursuant to 30 CFR 206.105(e) and 206.157(e), respectively, results in an overpayment for any sales month because the estimated transportation costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(2) If adjustment of an estimated gas processing allowance pursuant to 30 CFR 206.159(e) results in an overpayment for any sales month because the estimated processing costs were less than the actual costs, a person may submit a credit adjustment on a Form MMS–2014 to recoup, or may request a refund of, the overpayment. The credit adjustment or request for refund authorized by this paragraph is not subject to the requirements of section 10, and MMS approval is not required before reporting the credit adjustment.

(3) If a person makes an error in its original report of actual transportation or processing costs pursuant to paragraphs (f)(1) or (f)(2) of this section, any subsequent adjustment to a report of an actual transportation or processing allowance that results in a credit is subject to section 10 and the requirements of this subpart.

(g) If a person pays pursuant to an MMS order and challenges the obligation to pay in an administrative appeal or judicial action, and if the person is successful in its challenge to all or part of the MMS order to pay, section 10 shall not apply to the refund or recoupment of the disputed payment or portion thereof.

(h) MMS approval is not required for an adjustment by any person to the amount reported for any lease for a report month that results in a credit of less than $25 per payor code. However, no adjustment may be reported more than 2 years after the date MMS received the Form MMS–2014 including the excess payment.

[FR Doc. 93–25250 Filed 10–14–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4790–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period and correction to Regulatory Flexibility Act certification.

SUMMARY: On December 31, 1992 (57 FR 62608), EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The period for receiving public comment on the proposed rule ended on April 19, 1993. Public comments were received requesting the comment period be reopened after proposal of the general provisions for implementing standards issued under section 112 of the Act. This action announces the reopening of the comment period to take comment on the general provisions, as they apply to the proposed rule for SOCMI and seven other processes. This action also describes, for public review and comment, five possible changes to the emissions averaging policy proposed in the HON. Finally, this action corrects the Regulatory Flexibility Act certification for the SOCMI and seven other processes proposed rule by providing a summary of the reasons for the certification. The rationale for the certification was not published in the notice of proposal.

DATES: *Comments.* Comments must be received on or before November 15, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the EPA's Air Docket Section (LE-131), ATTN: Docket Number A-90-19, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dockets. The following dockets contain supporting information used in developing the proposed rule. Docket Number A-90-19 contains information specific to process vents, emissions averaging and general information used to characterize emissions and control costs for the industry; Docket A-90-20 contains information on equipment leaks; Docket A-90-21 contains information on storage vessels; Docket A-90-22 contains information on transfer operations; and Docket A-90-23 contains information specific to wastewater operations. Supporting information used in developing the negotiated standard for equipment leaks is available in Docket Number A-89-10. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Standards Development Branch, or Ms. Katherine Kaufman, Pollutant Assessment Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5299.

SUPPLEMENTARY INFORMATION: On December 31, 1992 (57 FR 62608), EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The proposed rule is commonly referred to as the hazardous organic NESHAP or HON. The comment period on the proposed rule ended on April 19, 1993. This notice reopens the public comment period for the HON. However, only comments limited to the subjects described below will be considered at this time.

General Provisions

The proposed rule contained references to subpart A of 40 CFR part 63, which will specify administrative procedures and criteria necessary to implement standards that are generally applicable to sources subject to part 63. Public comments were received on the HON requesting that EPA reopen the comment period when these general provisions (subpart A to 40 CFR part 63) are proposed. The commenters noted that the HON proposal lacked sufficient detail and rationale to permit meaningful comment on the unproposed general provisions which, if uncorrected, would cause a violation of the Administrative Procedures Act. Subpart A of 40 CFR part 63 was proposed on August 11, 1993 (58 FR 42760). This notice reopens the comment period for the HON to allow comment on those aspects of the general provisions that pertain to the HON.

Emissions Averaging

The proposed rule described two approaches for achieving compliance. One of the approaches, called emissions averaging, was the subject of significant public comment. In light of the public comment, the EPA is considering five changes to the HON emissions averaging policy as described below. Since these options were not described in the HON proposal, the EPA is describing them in this notice for public review and comment for a 30-day period.

1. State Discretion on Emissions Averaging

Several commenters indicated that State and local agencies should not be required to allow averaging as a compliance alternative if it would be inconsistent with their own policies, or if the resource and/or administrative burden were too heavy. As a result, the EPA is considering adding language to the HON that would grant State or local agencies the discretion to not include emissions averaging in their implementation of the HON without having to go through the section 112(l) rule delegation process. As proposed, the rule implementing the section 112(l) delegation process (40 CFR part 63 subpart E—58 FR 29296) allows a State or locality to adjust the HON rule to remove the averaging option and receive delegation of authority to implement and enforce the standard with minimal EPA review. The proposed change to the HON would allow a State or local agency to exclude emissions averaging when it implements the HON without any EPA review. The EPA is considering making this change to allow more flexibility in the implementation of the HON in States that, because of State statutory limitations, do not have the authority to elect requirements that are more stringent than Federal standards. States with these statutory limitations might not otherwise be able to use the section 112(l) rule delegation process to remove emissions averaging as a compliance option for the HON.

2. Inclusion of Risk in Averaging Determinations

Several commenters indicated that the relative risk of compliance through means of averaging compared to compliance without the use of averaging should be considered in determining whether an emissions average is acceptable. A commenter stated that compliance through averaging should be demonstrated to present no greater health or environmental risk than compliance without averaging. Many of these comments also indicated that, if risk equivalency concerns cannot be addressed, emissions averaging should not be allowed for compliance with the HON.

The proposed rule places no restriction on averaging emissions of HON pollutants of different toxicities. However, the preamble to the proposed rule did briefly describe and seek comment on two alternative methods for addressing the issue of averaging with different pollutants. Having further considered the two approaches described in the proposal preamble, with input from the public comments, the EPA has concluded that neither of these two approaches, both of which attempt to address all hazardous air pollutants (HAP), is developed in sufficient detail to provide the basis for final rulemaking at this time. However, in an effort to address risk equivalency concerns, the EPA is considering, and requesting comment on, a third approach for assuring that a particular averaging scheme does not result in an overall risk increase. This approach would require that sources that elect to use averaging must demonstrate, to the satisfaction of the agency implementing the HON, that compliance through averaging would not result in greater risk than compliance without averaging. To aid in the implementation of this requirement, the EPA is considering publishing guidance setting forth examples of what would constitute an adequate risk equivalency demonstration. The EPA specifically requests comment on whether such guidance would be useful or necessary to implement the risk demonstration requirement.

The decision to approve or disapprove any particular averaging plan would rest with the agency implementing the HON, in most cases a State or local air pollution control agency. Since many States have and use their own risk assessment policies and tools, these State or local agencies would be authorized to utilize not only the EPA guidance, but also any procedures approved by their own agencies, for analyzing the risk equivalence of the compliance scenarios with and without averaging. To satisfy a State or local agency that an averaging plan would not increase risk, a source might have to identify and quantify all the HAP included in the average. The EPA requests comment on whether identifying all the HAP in the emissions streams would pose difficulties for sources, and, if so, what those difficulties would be.

3. Compliance Period for Emissions Averaging

Several commenters indicated that the annual compliance averaging period originally proposed for the emissions averages was too long and inconsistent with other air pollution control policies. In addition, the EPA has concerns about the ability to take enforcement actions for violations that cover an entire year and, thus, involve the analysis and presentation of an entire year's monitoring data, which may make litigation complex. As a result, the EPA is considering a change in the averaging period for the HON. Specifically, the EPA is seeking comment on the following four alternatives: (1) A quarterly block averaging period; (2) a quarterly block averaging period with banking for up to one or two additional quarters; (3) a semiannual block averaging period with banking for an additional six-month period; and (4) a semiannual block averaging period. With a semiannual block averaging period, a source using averaging would have to ensure that the total emissions from points that are "under-controlled" and "over-controlled" relative to the emissions from a non-averaged compliance scenario are at least equal over a six-month period. The same requirement would apply for a quarterly block averaging period, only the averaged emissions would have to balance every three months. If banking were allowed across blocks, the source could reserve or "bank" extra emission reductions from "over-controlled" points to avoid certain noncompliance scenarios in the next one or two averaging periods. At the end of the period(s), the unused banked emission reductions would expire. The procedures for implementing and complying with these four alternative averaging periods would be the same as those described for the annual block included in the original HON proposal (57 FR 62744–62760), only the period of time for equating the "over controlled" and "under controlled" emissions would be shortened.

4. Limit on Number of Emission Points Allowed in an Average

The proposed emissions averaging provisions allow unlimited averaging across points in a HON source. This opportunity for broad averaging has raised concerns about the administrative complexity and enforcement difficulty that could occur if the owner or operator of a source used emissions averaging for a large number of points in the source. To address these concerns, EPA requests comment on the feasibility of limiting averages to include only a percentage of the emission points in a source. The EPA is considering a dual limitation with a range of (1) 5 to 15 individual emission points, or (2) 5 to 15 percent of the points in the HON source, whichever is greater for the particular source. The dual limit is being considered to address the needs of small HON sources. A percentage-based limit would not afford much flexibility for these sources. Commenters should address (1) what number/percentage within these ranges would be appropriate and why and (2) to what extent such a limitation would affect a source's ability to utilize the averaging provisions and the reasons why this would occur.

5. Effect of Missing Monitoring Data/ Parameter Exceedances on Averaging

The EPA requests comment on the impact on calculation of an emissions average for operating emission points that are part of an average (1) during any time that monitoring data are missing or the monitor is not functioning, or (2) during any unexcused period of time when the monitor indicates that the operating parameter values are outside the permissible range. Specifically, EPA requests comment on an approach whereby, in such circumstances, no credits would be assigned to a credit generator and maximum debits would be assigned to a debit generator, unless the source can establish that partial credits or debits should be given.

Regulatory Flexibility Act

This notice also corrects the Regulatory Flexibility Act certification by providing a summary of the rationale for the certification. The rationale for the certification was inadvertently omitted from the December 31, 1992 proposal in the **Federal Register**. The basis for the certification is summarized in the paragraphs below.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small "entities". A regulatory flexibility analysis is required if preliminary analysis indicates that a proposed regulation is expected to have a significant economic impact on a substantial number of small entities. Regulatory impacts are considered significant if any of the following criteria are met: (1) Annual compliance costs increase total cost of production by more than 5 percent; (2) annual compliance costs exceed 10 percent of profits for small entities; (3) capital costs of compliance represent a significant portion of capital available to small entities; or (4) regulatory requirements are likely to result in closures of small entities.

Firms in the chemical industry are classified as small by the Small Business Administration (SBA) if employment is less than 500 to less than 1000 employees depending on the particular Standard Industrial Classification (SIC) of the firm. The firms classified as small by this definition are only small in a relative way because an average firm with 500 employees in the SOCMI industry has an average sales of over $180 million.

Of the 56 firms analyzed in the economic impact analysis, only 10 have fewer than 1000 employees. Since these 10 are only 15 percent of the firms analyzed, they do not constitute a substantial number (usually 20 percent). The economic analysis also projected generally small impacts (91 percent of the analyzed sample are projected to have output changes of less than 2 percent). Therefore, the standard is not expected to have a significant economic impact on a substantial number of small firms.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small business entities.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–25461 Filed 10–14–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 440, 441 and 447

[MB-027-P]

RIN 0938-AF07

Medicaid Program; Case Management

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to provide for optional coverage of case management services furnished to specific groups, geographic areas, or political subdivisions within a State. Case management services are those activities that assist in coordinating access to necessary care and services appropriate to the needs of an individual.

These proposed regulations would implement provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Omnibus Budget Reconciliation Act of 1986, the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Technical and Miscellaneous Revenue Act of 1988, concerning case management services.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 14, 1993.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Department of Health and Human Services, Health Care Financing Administration, Attention: MB-027-P, P.O. Box 7518, Baltimore, Maryland 21207-0518.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB-027-P. Written comments received timely will be available for public inspection as they are received, generally 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: 202-690-7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, New Executive Office Building (Room 3002), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Wardwell, (410) 966-5659

SUPPLEMENTARY INFORMATION:

I. Background

Case management has historically been defined as an activity that assists in coordinating access to necessary care and services appropriate to the needs of an individual. The term has been applied to such disparate functions as case finding, prior authorization of services, referral, case coordination and counseling. In the broadest context, case management services have been used to provide necessary coordination with individuals or entities providing nonmedical services, such as local education agencies or departments of vocational rehabilitation, when the services furnished by these entities are needed to enable an individual to function at the highest attainable level or to benefit from programs for which he or she might be eligible.

Aspects of case management have been integral to the Medicaid program since its inception. The law has always required that States have interagency agreements under which Medicaid recipients may be assisted in locating and receiving needed Medicaid services when these services are furnished by non-Medicaid agencies. Basic case management functions have existed as components of the States' administrative apparatus for the Medicaid program and also as integral parts of the services furnished by the providers of medical care. Physicians, in particular, have long provided patients with advice and assistance in obtaining access to other necessary services.

In 1981, the Congress, recognizing the value and general utility of case management services, amended the Social Security Act (the Act) to authorize Medicaid coverage of case management services under two provisions. Under section 1915(b) of the Act, States were authorized to develop case management systems in order to direct patients to appropriate services. Under section 1915(c) of the Act, States were authorized to furnish case management as a distinct service under home and community-based services waivers. Case management was widely used under both authorities because of its value in ensuring that Medicaid recipients were assisted in making necessary decisions about the care they needed and in locating providers appropriate to their needs.

II. Legislative Changes

Section 9508 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272), enacted on April 7, 1986, amended the Act concerning the provision of case management services. Specifically section 9508 of COBRA added a new section 1915(g) to the Act which—

- Provides that a State may elect to furnish case management services as a service covered under the State plan to specified groups;
- Defines case management services as services which will assist individuals, eligible under the State plan, in gaining access to needed medical, social, educational, and other services;
- Provides an exception to the statewideness requirement of section 1902(a)(1) of the Act by allowing a State to limit its provision of case management services to recipients who reside in particular geographic areas or political subdivisions within the State;
- Provides an exception to the comparability requirement of section 1902(a)(10)(B) of the Act by allowing a State to furnish case management services to any specific group (targeted case management); and
- Provides that there be no restriction on a recipient's free choice of providers in violation of section 1902(a)(23) of the Act.

Further amendments to the Act with regard to case management services were made by section 1895(c)(3) of the Tax Reform Act of 1986 (Pub. L. 99-514). This law amended section 1905(a) of the Act by adding a new paragraph (19) (and redesignating existing paragraph (19) as paragraph (20)), which adds case management services, as defined in section 1915(g)(2) of the Act, to the list of optional services a State may include in its Medicaid plan. Section 9411(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99-509, amended section 1915(g) of the Act by providing that a State may limit the provision of case management services to individuals

with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either. Section 1915(g) of the Act was also amended to permit a State to limit case management services to individuals with chronic mental illness.

Section 4118(i) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, amended section 1915(g)(1) of the Act to allow States to limit the providers of case management services available to developmentally disabled or chronically mentally ill individuals, or to any subgroups of such individuals that a State may choose to define.

Section 8435 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) prohibits the Secretary from denying approval of a State plan amendment to provide targeted case management services on the basis that the State was or is paying for these services from other revenue sources. This provision also specifies that the Secretary is not required to make payment under Medicaid for case management services that are furnished without charge to recipients.

This proposed rule would implement in Federal regulations the provisions of the law that permit coverage of case management services as an optional service under a State Medicaid plan, in accordance with section 1915(g) of the Act. This proposed rule also examines the relationship of section 1915(g) case management services to case management services furnished under the various waivers granted under section 1915 of the Act, and the distinction between section 1915(g) case management services that are paid at the medical assistance service match rate and case management activities performed as an administrative expense to the Medicaid program.

III. Provisions of the Proposed Regulations

A. Targeted Case Management Services Requirements

Under section 1915(g)(1) of the Act, a State is not required to furnish case management services to all eligible individuals in the State, and thus is not bound by the "statewideness" requirement of section 1902(a)(1) of the Act. (The "statewideness" requirement of section 1902(a)(1) provides, in part, that the provisions of a State plan be in effect in all political subdivisions of the State.) Thus, States may limit the provision of case management services to any defined location of the State (that is, city, county, community, etc.).

Section 1915(g)(1) of the Act also permits States to target case management services to individuals with particular diseases or conditions, without regard to the "comparability" provision in section 1902(a)(10)(B) of the Act. (The "comparability" provision generally requires States to make medical assistance available in the same amount, duration, and scope to all eligibility groups.) Thus, a State may limit the furnishing of case management services to any specific group, such as individuals with acquired immune deficiency syndrome (AIDS), AIDS-related conditions, or chronic mental illness. A State's flexibility to target case management services to a specific group sets these services apart from most other services available under the Medicaid program. The exception to the comparability requirement makes it possible to furnish case management services to any number of categories of recipients.

In identifying the groups eligible to receive targeted case management services, States are not required to distinguish eligible individuals by traditional Medicaid concepts of eligibility groups (that is, mandatory categorically needy, optional categorically needy, medically needy), although this avenue continues to be available to States, should they choose it. Instead, States may target case management services by age, type or degree of disability, illness or condition, or any other identifiable characteristic or combination of characteristics. There is no limit on the number of groups to whom case management services may be targeted, nor is there any set minimum or maximum number of recipients to be included in a target group.

We note that the exception to the comparability requirement applies only to the provision of targeted case management services under section 1915(g) of the Act. The comparability requirement of section 1902(a)(10)(B) of the Act continues to apply to all other Medicaid services for which an individual may be eligible, unless these services are subject to comparability exceptions in their own right. In other words, receipt of case management services does not in any way alter an individual's eligibility to receive any other service under the State plan.

Because the Act does not set any minimum standards for the provision of case management services, we are proposing to give States flexibility to establish reasonable qualifications for providers to ensure that providers are capable of providing services of acceptable quality, consistent with 42 CFR 431.51(c)(2), which allows States to set reasonable standards relating to the qualifications of providers. We are proposing that the qualifications of a provider of case management services be dictated by the needs of the population to be served, and by the duties and responsibilities inherent in the provision of the case management services, as defined by States in their State plans. Under these proposed regulations, States may establish separate minimum qualifications for the providers of these services as they apply to each target population.

The qualifications set by the State must be reasonably related to the case management functions that a provider would be expected to perform. For example, it may be considered reasonable that the qualifications of providers of case management services for ventilator-dependent children would be different than those of case management providers for women experiencing high risk pregnancies. States may limit participating providers in the program, but only through development of reasonable provider qualifications related to an entity's capacity to furnish case management services of adequate quality.

We considered proposing minimum qualifications for providers of case management services, but instead decided that qualifications are best left to the judgment of States, which can take into account the unique requirements of local circumstances and the particular needs of the target group to be served. However, we invite public comment on this subject.

Section 9508 of COBRA amended section 1915(g) of the Act to provide that there be no restriction on a recipient's free choice of providers, in violation of section 1902(a)(23) of the Act. Based on COBRA's legislative history, we believe the Congress intended that individuals receiving targeted case management services under section 1915(g) of the Act not be locked into designated providers, whether for the case management services standing alone, or for other services. (See H. Rept. No. 453, 99th Cong., 1st Sess. 546 (1985).) (We note, however, that in situations where the State has chosen to furnish case management services on a less-than-statewide basis, free choice of qualified providers is limited to those providers located within all of the identified geographic areas or political subdivisions as specified in the State plan.) Therefore, with the exception noted below for developmentally disabled or chronically mentally ill recipients, we are proposing that an

individual eligible to receive case management services must be free to receive these services from any qualified provider of case management services. The recipient may not be limited to case management providers in a particular county (unless the case management services are limited to that county) or provider setting, even if the individual receives all other Medicaid services through or in that county or provider setting.

Similarly, States may not limit the entities that qualify as providers of case management services to State or other public agencies for targeted groups other than the developmentally disabled or chronically mentally ill. States must permit any person or entity that meets the established qualifications and who undertakes to furnish case management services to the targeted group to become a Medicaid provider.

The Congress recognized that, while the freedom of choice requirement was beneficial to the Medicaid population as a whole, this requirement might not adequately protect the interests of developmentally disabled or chronically mentally ill individuals. Therefore, section 4118(i) of OBRA '87 amended section 1915(g)(1) of the Act to provide States with the option of limiting the case management providers available to these targeted groups, to ensure that the case management providers for these individuals are capable of ensuring that the targeted recipients receive the full range of needed services. This limitation is permissible only with regard to targeted groups of developmentally disabled or chronically mentally ill individuals, or to any subgroups of such individuals that a State may choose to define.

Consistent with section 1915(g) of the Act, as amended by section 4118(i) of OBRA '87, we are proposing that when the target group consists only of individuals with developmental disabilities or chronic mental illness, States may limit the case management providers available to the target group. This limitation is permissible only with regard to the target groups of developmentally disabled or chronically mentally ill, or to any subgroups that a State may wish to define (for example, based on age or degree of impairment). However, any defined subgroup must continue to meet the definition of chronic mental illness or developmental disability.

We are also proposing that States desiring to exercise this option must clearly specify this choice in their State plan amendments. They must identify any limitations to be imposed on the providers and specify how these limitations are consistent with the mandates of the statute (that is, to ensure that such providers of case management services for targeted individuals are capable of ensuring that such individuals receive needed services). It should also be noted that, although States may limit the case management providers available for these two target groups, individuals within the target groups continue to retain the right to free choice of the qualified providers of targeted case management services identified by the State.

Section 1902(a)(19) of the Act specifies that States must provide safeguards to ensure that services will be furnished in a manner consistent with simplicity of administration and the best interests of recipients. Consistent with this provision of the Act, we believe that States may not require that an individual receive another Medicaid service (for example, clinic or respiratory care services) as a precondition for the receipt of case management services. There may be situations where recipients require only case management services to address their needs. Under these circumstances, hinging the receipt of case management services on the receipt of other Medicaid services would prevent recipients from accessing necessary care and services. Consequently, such a requirement would not be in the best interest of recipients. Therefore, we are proposing that a State plan not condition receipt of case management services on the receipt of other Medicaid services. However, as noted previously, States may target their case management services to persons who, by virtue of their disease or condition, would be eligible to receive another Medicaid service.

In addition, we are proposing that the receipt of case management services must be at the option of individuals included in a specific target group. We believe this requirement is also consistent with section 1902(a)(19) of the Act. A recipient cannot be compelled to receive case management services for which he or she might be eligible. Any condition requiring a recipient to receive case management services against his or her will would not be in the best interest of the recipient and, thus, would be in violation of section 1902(a)(19) of the Act.

An extant issue is the permissibility of "prior authorization" as it relates to the provision of case management services. Section 1915(g)(1) of the Act prohibits the use of targeted case management services in any fashion that would restrict recipient access to other care and services furnished under the State plan. The very nature of prior authorization entails the power to restrict access to services—that is, to the extent to which authorization may be denied, access may also be denied. Because this concept is contrary to the statutory definition of case management services, providers of case management services furnished under this section are prohibited from performing prior authorization functions under Medicaid. Therefore, we are proposing that a State plan prohibit providers of case management services from exercising the State agency's authority to authorize or deny the provision of other services under the plan.

We note, however, that prior authorization continues to be a legitimate function of a State Medicaid agency, which may continue to perform it as an appropriate component of the administration of a State plan. We would also note that, while a recipient is free to accept or reject the advice of a provider of case management services, a decision regarding prior authorization (made by a State agency), when not contested by the recipient, is considered binding. However, a decision regarding prior authorization for Medicaid services is subject to the rules governing fair hearings under 42 CFR 431.200 *et seq.*

We are proposing that States desiring to furnish case management services in accordance with section 1915(g) of the Act do so by amending their State plans. States must submit a separate State plan amendment for each group that will receive case management services. Each amendment must: (1) Define the targeted group (and/or subgroup); (2) Identify the geographic area to be served; (3) Describe the services to be furnished; (4) Specify the qualifications of the service providers; and (5) Specify the arrangements under which providers will be paid. A separate amendment must be submitted for each subgroup within a group if any of the following differs: (1) the services to be furnished; (2) the qualifications of providers; or (3) the arrangements for provider payment.

B. Rates of Federal Financial Participation (FFP) in the Cost of Case Management Activities

Under section 1915(g) of the Act, FFP is available only for case management services which assist Medicaid recipients in gaining access to needed medical, social, educations, and other covered services. However, FFP is not available under section 1915(g) for the cost of the actual services to which an

individual is referred. FFP is only available for these other services if they are provided for in the State's Medicaid plan under the authority of section 1905(a) of the Act.

As with all Medicaid services, payment for case management is dictated by the nature of the activity and the purpose for which the activity is performed. In authorizing States to offer case management services, the Congress recognized that there was some potential for duplicate payments. This situation can arise when the same or similar services are furnished by other programs, or under other authorities of the Medicaid program itself, either as an integral aspect of the administration of a State Medicaid plan (as a matchable administrative cost) or as an integral aspect of a covered services (when payments are matched at the Federal medical assistance percentage (FMAP) specified in 42 CFR 433.10). This recognition led to an explicit statement in the legislative history prohibiting the duplication of payments. (See H. Rept. No. 453, 99th Cong., 1st Sess. 546 (1985).)

The Congress reaffirmed its prohibition on the duplication of funding in section 8435 of the Technical and Miscellaneous Revenue Act of 1988. This section of the statute prohibits the Secretary from denying approval of a State plan amendment to furnish targeted case management services on the basis that the State was or is paying for these services from other revenue sources. The amendment also specifies that the Secretary is not required to make payment under Medicaid for case management services that are furnished without charge to recipients. This is in keeping with the longstanding position that the Medicaid program is the payer of last resort. As with all Medicaid services (with the statutory exceptions of case management services included in Individualized Education Programs or Individualized Family Service Plans and services furnished through title V agencies), payment for case management services cannot be made when another payer is liable, nor may payment be made for services for which no payment liability is incurred.

To comply with these statutory requirements, we are proposing that providers document contacts with recipients and contacts made on behalf of recipients and the nature of these contacts. Providers must maintain case records that document the name of the recipient, the date of service, the name of the provider agency and the person providing the service, the nature, extent, or units of service, and the place of service delivery.

We also are proposing that FFP not be available for case management services furnished in accordance with section 1915(g) of the Act if these services duplicate services available under (or are paid under) another authority or are available without charge to the Medicaid recipient. So long as duplication of funding is avoided, or payment is not made for services for which no payment liability has been incurred, however, appropriate payments may be made for covered services.

Specifically, we are proposing that FFP is not available for expenditures for case management services furnished in accordance with section 1915(g) of the Act under the following conditions:

- Case management activities that are furnished as an integral component of another covered Medicaid service. An example of this type of case management is the preparation of plans of treatment by home health agencies. Since the preparation of these plans is required as a part of home health services, separate reimbursement for the case management component cannot be made because it is included in the payment made for the home health service.
- Case management activities that duplicate payments made under another program authority for the same purpose. For instance, a State may have a non-Medicaid funded case management program that furnishes case management services to pregnant women and infants. FFP would not be available under section 1915(g) of the Act for similar case management services furnished to the same target group.
- Case management activities that are furnished as a function necessary for the proper and efficient operation of the Medicaid State plan, as provided in section 1903(a) of the Act. These include case management activities such as utilization review, prior authorization, and nursing home preadmission screening. Since these case management activities are not furnished as a "medical assistance" service to the individual recipient, FFP is not available under section 1915(g) of the Act.

It is important to note that, in addition to the section 1915(g) authority, States may furnish case management services to recipients under other authorities of the Medicaid program. In each case, the FFP rate is determined by the purpose and nature of the case management activity. The following clarifies particular situations in which case management services may be furnished under Medicaid (other than under the authority of section 1915(g) of the Act) and the FFP rates that would apply.

- Case management may be an integral and inseparable part of an otherwise covered Medicaid service listed in section 1905(a) of the Act (for example, home health services), when that service is included in a State's approved Medicaid State plan. In such cases, separate reimbursement for the case management component cannot be made, but is included in the payment made for the otherwise covered service listed in section 1905(a) of the Act. Payment is made for these section 1905(a) services as "medical assistance" at the FMAP rate.
- When case management is furnished as a discrete service under a waiver approved in accordance with section 1915 (c), (d), or (e) of the Act, payment is made at the FMAP rate, since the Act describes home and community-based waiver services under each of these authorities as "medical assistance." (FFP for services furnished under a section 1915(d) waiver, including case management services, is subject to the aggregate projected expenditure limitation calculated in accordance with section 1915(d)(5) of the Act.)
- Case management services performed under a waiver granted in accordance with section 1915(b)(1) of the Act, when furnished by a vendor, may be considered for purposes of this section to be "medical assistance," as described under section 1905(a)(19) of the Act. As such, they may qualify to be paid at the FMAP rate whether or not the State furnishes case management as a plan service in accordance with section 1915(g) of the Act (see section III.C. of this preamble).
- Case management activities performed by employees of the State Medicaid agency, either in general administrative support of the plan, or to administer a waiver under section 1915(b) of the Act, are generally construed to be functions necessary for the proper and efficient administration of the Medicaid State plan, in accordance with section 1903(a) of the Act. Therefore, payment is made at the rate determined under section 1903(a) of the Act (that is, the 50-percent administrative match or, if appropriate, one of the premium match rates provided at that section). Consequently, although FFP is not available under section 1915(g) of the Act, FFP may be available for activities specified under section 1903(a) of the Act.
- Case management activities furnished in support of the administration of the plan by the

Medicaid agency, or by employees of other agencies (such as social services agencies or developmental disabilities administrations) under interagency agreements with the Medicaid agency may also qualify for the administrative match when the activities are found to be necessary for the proper and efficient administration of the Medicaid State plan.

• Case management services furnished under section 1905(a)(19) of the Act are defined as "medical assistance," and, therefore, are paid at the FMAP rate.

C. Relationship of Section 1915(g) Case Management Services to Section 1915(b) Waivers

A case management system furnished in accordance with section 1915(b) of the Act is separate and distinct from case management services furnished under section 1915(g) of the Act. Under a primary care case management system implemented through a section 1915(b)(1) waiver, the Medicaid agency ensures that a specific person or persons or agency will be responsible for locating, coordinating, and monitoring all primary care, or primary and other medical care, and rehabilitative services on behalf of a recipient. Such case management systems may restrict access to providers (other than in emergency circumstances and for family planning services), as well as to items and services covered by a State's Medicaid plan. Regulations for section 1915(b) waivers are found at 42 CFR 431.55.

In contrast, targeted case management services furnished in accordance with section 1915(g) of the Act prohibit restriction of access to providers. Section 1915(g) case management services consist of assisting Medicaid recipients in gaining access to needed medical, social, educational, and other services, not all of which need be provided for in a State's Medicaid plan.

D. Relationship of Case Management Services to Other Waivers Available Under Section 1915 of the Act

Case management services continue to be available under home and community-based services waivers approved in accordance with sections 1915(c) and 1915(d) of the Act. In addition, although case management services are not separately identified under section 1915(e) of the Act, they may be furnished under a section 1915(e)(1) waiver as "other services." However, because approval for services under these waivers may only be granted for services not otherwise available under a State plan, the amendment of a State plan to include section 1915(g) case management services may necessitate the modification of an existing waiver that furnishes such services.

This situation does not present a problem when the target group under a waiver differs from that in the State plan amendment for section 1915(g) case management services, or when the definition of case management services under the waiver differs from that under the section 1915(g) State plan amendment. However, when a target group (and/or subgroup) and the service definition under the terms of the waiver and the State plan amendment are the same, duplication of funding would occur. In these cases, therefore, the waiver must be amended to delete case management services insofar as such services are furnished under a State plan. The waiver amendment would have no effect on recipients, but would only affect the method of protecting and tracking costs for waiver recipients and preventing duplicative funding.

Payment for case management services furnished under a State plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose, including payments made for services furnished under a home and community-based services waiver. In addition, States must indicate in the State plan amendment that case management services provided in accordance with section 1915(g) of the Act will not duplicate case management services provided under any home and community-based services waiver.

Regulations governing waivers granted under sections 1915 (b), (c), and (d) of the Act have already been published at 42 CFR 431.55, 42 CFR 441.300, and 42 CFR 441.350 through 441.365, respectively. Regulations governing waivers granted under section 1915(e) of the Act will be published in a separate document.

E. Administration of the State Plan

The addition of case management services in sections 1915(g) and 1905(a)(19) of the Act (as amended by COBRA and Public Law 99–514, respectively) to the list of covered services that may be furnished under a State plan does not alter a State's ability, or responsibility, to perform activities in support of the administration of its State plan. FFP continues to be available under section 1903(a) of the Act at the administrative rate for these activities. In addition, the Act continues to require that a State plan be operated in the best interest of Medicaid recipients. However, we do not propose to set forth an exhaustive listing of administrative activities that may be eligible for FFP.

We believe that case management as a service under a State plan and case management activities performed in support of the administration of a State plan must be considered two separate functions, each with its own purpose and set of rules for payment. Case management services, as defined in section 1915(g)(2) of the Act, are recipient-based activities, which have as their purpose the linking of an eligible individual with the most appropriate providers of care and services, regardless of the funding source of the care and services. Case management performed as an administrative activity, however, is primarily concerned with the proper and efficient administration of a State plan. However, although payment practices for these services differ, a small number of functions may be common to both types of case management services (such as referral to Medicaid providers of services in the plan).

We also note that case management furnished as a service under the State plan is subject to the rules for service provisions that govern the Medicaid program as a whole. These include requirements for free choice of providers, as discussed under section III.A. of this preamble, as well as mandated provider agreements with the Medicaid agency (including State agency employees), Medicaid payment direct to the providers of the service, and financial and recordkeeping rules.

When case management activities are performed as an administrative function in support of a State plan, an entirely different set of requirements apply. To qualify as an administrative expense, an activity must be related to the administration of a State Medicaid plan. Activities that may be beneficial to the recipient, but are unrelated to Medicaid (such as assistance in locating suitable housing), may qualify for Federal funding under other funding authorities, but, because they have no connection with a State Medicaid plan, section 1903 of the Act does not authorize payment of administrative FFP.

F. Differentiation Between Targeted Case Management Services and Case Management Activities Matched as Administrative Costs

There are certain case management activities that may appropriately be classified as eligible for FFP at either the administrative or the service match rate. For example, referral to a participating provider for services may be claimed as a case management service at either the administrative or the service match rate

if a State plan provides for coverage of the activity as a case management service. Situations in which a choice may arise in claiming activities at either the administrative or service match rates may occur when the entire case management function is concerned with linking Medicaid recipients with services and providers under the plan. In cases where an activity may qualify as either a Medicaid service or an administrative activity, States have the latitude to classify the function in either category. This decision should be made prior to claiming FFP, however, because of the different rules that apply to each type of function under the Medicaid program.

G. Case Management as a "Medical Assistance" Cost

FFP is available at the FMAP rate for allowable actual expenditures for case management services only when the following tests are met:

- The expenditures were made on behalf of eligible recipients included in the target group;
- The services were furnished as defined in the approved State plan;
- The case management services were furnished by individuals or entities with whom the Medicaid agency had in effect a valid provider agreement;
- The case management services were furnished to assist an individual in gaining access to needed services. Although FFP may be available for case management activities that identify the specific services needed by an individual, assist recipients in gaining access to these services, and monitor to ensure that needed services are received, FFP is not available for the cost of these specific services unless they are separately reimbursable under Medicaid. Also, FFP is not available for the cost of the administration of other services or programs to which a recipient is referred, for example, educational or juvenile services agencies;
- The State payment for the services was made following the receipt of a valid provider claim.

When case management is furnished as a "medical assistance" item under a State plan (that is, as a service under section 1905(a) or 1915(g) of the Act), the service is subject to the usual rules pertaining to all Medicaid services. If a State chooses to cover "gaining access to Medicaid services" as a case management service under its State plan, it cannot claim FFP at the administrative rate for the same types of services furnished to the same target group as medical assistance.

Examples of case management activities at the service match rate include assisting a recipient in gaining access to social services, food stamps, energy assistance, or housing. Such activities must be clearly delineated in the State plan amendment.

H. Case Management As An Administrative Cost

When case management activities are furnished as an administrative cost, section 1903(a) of the Act requires that, to be eligible for FFP, they must be necessary for the proper and efficient administration of the plan. Because activities related to services that Medicaid does not cover are not considered necessary for the administration of the Medicaid plan, the costs of administration of case management involving non-Medicaid services are not eligible for Medicaid FFP. Case management activities related to obtaining social services, food stamps, energy assistance, or housing cannot be considered an administrative expense because they are not covered services under Medicaid.

Case management activities may be classified as allowable administrative costs of the Medicaid program when:

- They are furnished in a manner consistent with simplicity of administration and the best interest of the recipient, as prescribed by section 1902(a)(19) of the Act; and
- Documentation maintained in support of the claimed expense is sufficiently detailed to permit HCFA to determine whether the activities are necessary for the proper and efficient administration of the State plan, as provided by section 1903 of the Act, and do not duplicate case management services furnished in accordance with sections 1905(a)(19) and 1915(g) of the Act.

Although the two types of case management services (that is, administrative and medical assistance) are not mutually exclusive, we reiterate that the primary focus of the administrative activity is the proper and efficient administration of the Medicaid State plan. When case management is furnished as "medical assistance," however, it is furnished as a service to the individual recipient.

We will evaluate the activities for which FFP is claimed to determine whether they meet the requirements (either administrative or service match) for payment. When FFP is claimed for any functions performed as administrative case management under section 1903(a) of the Act, documentation must clearly demonstrate that the activities were furnished to Medicaid applicants or recipients, and were in some way connected with determining eligibility or administering services covered under the State plan. In addition, all rules for claiming Federal matching funds must be observed. When a State expects to claim FFP for Medicaid administrative case management activities, the costs for these activities must be included in a cost allocation plan submitted to and approved by the appropriate HCFA Regional Office.

The determining factor in ascertaining whether a case management activity could qualify for administrative FFP is its relationship to the functioning of the Medicaid State plan. If the activity has a direct link with the appropriate operation or utilization of the Medicaid plan, it is considered necessary for the proper and efficient administration of that plan.

The following list of functions provides examples of activities that may properly be claimed as "case management administrative costs," but not as case management services. This list should be considered representative only. The exclusion of any particular function from this list should not be taken, in and of itself, to represent our determination that the function is not necessary for the administration of the plan. Similarly, the inclusion of items on this list does not represent a determination that any activity characterized in these terms is always necessary for the administration of the State plan.

- Medicaid eligibility determinations and redeterminations;
- Medicaid intake processing;
- Medicaid preadmission screening for inpatient care;
- Prior authorization for Medicaid services, and utilization review; and
- Medicaid outreach (methods to inform or offer opportunity to recipients or potential recipients to enter into care through the Medicaid system).

Administrative case management activities may be performed by another government entity under an interagency agreement. The administrative case management activities for which FFP is claimed must be limited to assisting individuals in gaining access to Medicaid-funded services and the ongoing monitoring of Medicaid services, and may not include the costs of administration of other functions of State government. For example, setting up an appointment with a Medicaid-participating physician and arranging for transportation for a recipient could be considered case management administrative activities necessary for the proper and efficient administration

of the Medicaid plan. However, arranging for baby-sitting for a recipient's child, although beneficial to the recipient, has no connection with the Medicaid program, and therefore is not an activity for which administrative FFP can be claimed.

Similarly, when a caseworker suspects that physical abuse of a recipient has occurred, the referral to medical care could be considered a reimbursable administrative activity under the Medicaid program. However, assisting the victim in obtaining emergency housing and legal services, although in the best interest of the recipient, is not related to the administration of the Medicaid program, and therefore is not eligible for FFP. In cases where workers perform activities funded under multiple auspices, proper records must be kept to document the State's claims for Federal matching funds under the appropriate authorities.

It is the nature of the activity, rather than the person or agency performing the activity, which governs the determination of the availability of FFP. If an activity cannot be determined necessary for the administration of a State plan, there is no statutory basis for claiming FFP as an administrative cost under section 1903(a)(7) of the Act.

IV. Proposed Revisions to the Regulations

In order to incorporate the policies and implement the statutory provisions described above, we propose to make the following revisions to 42 CFR chapter IV, subchapter C, Medical Assistance Programs.

- We would revise § 431.51(c) by adding a new paragraph (c)(4) to provide States with the option of limiting the number of providers of case management services available to furnish services defined in § 440.169 to targeted groups of individuals with developmental disabilities or chronic mental illness.
- In § 431.54, we would add a new paragraph (g) to include case management services as an exception to the statewide operation requirement in § 431.50(b).
- In part 440, we would add to subpart A a new § 440.169, Case management services, which would define a new optional Medicaid service for which FFP is available to States.
- We would revise § 440.250 by adding a new paragraph (r) to provide for an exception to the comparability requirements under § 440.240 for case management services.
- In part 441, subpart A, we would revise § 441.10 to add a statutory basis for the case management provision.
- We also would add to subpart A a new § 441.18, Case management services, to specify State plan requirements and limitations on availability of FFP for case management services.
- In part 447, we would add new § 447.327, Case management services: Upper limits of payment, to set forth the upper limits of payment for targeted case management services.

V. Collection of Information Requirements

Regulations at § 441.18 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the development of recipient case records and the development of State plan amendment material regarding the provision of case management services. The respondents who will provide the information include providers of case management services and State Medicaid agencies. Public reporting burden for this collection of information is estimated to be one-quarter of an hour for case management providers per recipient per contact for claims and clinical record documentation, and 3 hours per State plan amendment for State Medicaid agencies. However, several Medicaid agencies have advised us that they do not believe that these requirements will result in any increased burden. These agencies indicated that they already require providers of case management services to document contacts with Medicaid recipients and they believe that this is a common practice among all Medicaid agencies.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would 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 any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

- In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

Section 1915(g) of the Act provides for Medicaid coverage of a new State plan service, optional targeted case management services. This proposed regulation incorporates that statutory provision in the Federal regulations.

Under section 1915(g) of the Act, States may, without securing a waiver, provide more effective Medicaid coverage by furnishing case management services to specified Medicaid groups on a statewide basis and/or on an individual basis to those individuals who may reside in a particular geographic area of the State. If a State elects to furnish case management services, FFP will be available to the State to assist Medicaid recipients in gaining access to needed medical, social, educational and other services. Recipients retain the right to select among qualified Medical providers of case management services.

We are unable to estimate the net costs/savings that might result from case management under section 1915(g) of the Act for the following reasons. The use of case management services may result in increased access to other services, including those covered under Medicaid. Conversely, provision of case management services may work to lower both Federal and State costs by encouraging the use of cost-effective medical care through referrals to qualified providers, and by discouraging inappropriate utilization of costly

services such as emergency room care for routine procedures. The use of case management services also may eliminate unnecessary care and over-utilization of services. Further, by facilitating early treatment, the use of case management services can preclude the need for more costly "last resort" treatment alternatives. Because we cannot predict the effect these factors will have on the utilization of services, we are unable to estimate the costs or savings that may result from implementing case management under section 1915(g) of the Act.

In fiscal year 1989, Federal and State expenditures for case management services themselves were $64 million, increasing to $146 million by fiscal year 1990. Expenditures for fiscal years 1991 and 1992 further increased to $264 million and $375 million, respectively, and we project an increase to $423 million in fiscal year 1993. However, these figures do not reflect offsetting decreases that may have occurred in other service categories during this period.

We have determined, however, that this proposed rule is not a major rule under Executive Order 12291, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have made this determination because the increase in Medicaid expenditures results from the statutory provisions that define targeted case management as "medical assistance," rather than from publication of this proposed rule. Thus, the projected increase in Medicaid expenditures for targeted case management services would occur even in the absence of this proposed rule and may, in fact, even be greater due to inappropriate claiming of FFP for targeted case management services.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 42 CFR chapter IV, subchapter C would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 431.51, paragraph (c) introductory text is republished, paragraphs (c)(2) and (c)(3) are revised and a new paragraph (c)(4) is added to read as follows:

§ 431.51 Free choice of providers.

* * * * *

(c) *Exceptions.* Paragraph (b) of this section does not prohibit the agency from—

* * * * *

(2) Setting reasonable standards relating to the qualifications of providers;

(3) Subject to paragraph (b)(2) of this section, restricting recipients' free choice of providers in accordance with one or more of the exceptions set forth in § 431.54, or under a waiver as provided in § 431.55; or

(4) Limiting the number of providers who are available to furnish case management services defined in § 440.169 to individuals with developmental disabilities or with chronic mental illness. This limitation may only be permitted to ensure that the providers of case management services for eligible individuals with developmental disabilities or with chronic mental illness are capable of ensuring that such individuals receive needed services.

* * * * *

3. Section 431.54 is amended by revising paragraph (a) and by adding a new paragraph (g) to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

(a) *Statutory basis*—(1) Section 1915(a) of the Act provides that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a) (1), (10), or (23) of the Act solely because it has elected any of the exceptions set forth in paragraphs (b) and (d) through (f) of this section.

(2) Section 1915(g) of the Act provides that a State may provide, as medical assistance, case management services under the plan without regard to the requirements of sections 1902(a)(1) and 1902(a)(10)(B) of the Act.

* * * * *

(g) *Case management services.* The requirements of § 431.50(b) relating to the statewide operation of a State plan do not apply with respect to case management services defined in § 440.169.

PART 440—SERVICES: GENERAL PROVISIONS

B. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 440.169 is added to subpart A to read as follows:

§ 440.169 Case management services.

Case management services means services furnished to assist individuals eligible under the State plan in gaining access to needed medical, social, educational and other services, in accordance with § 441.18 of this subchapter. Gaining access may include necessary followup or monitoring of an individual's progress or status.

3. Section 440.250 is amended by reserving paragraph (q) and adding a new paragraph (r) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(q) [Reserved]

(r) If covered under the plan, case management services may be limited to—

(1) Certain geographic areas within a State, without regard to the statewide requirements in § 431.50 of this subchapter; and

(2) Targeted groups specified by the State in its State plan.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

C. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.10 is revised to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

Section 1102 for end-stage renal disease (§ 441.40).

Section 1138(b) for organ procurement organization services (§ 441.13(c)).

Section 1902(a)(10)(D) and 1905(a)(7) for home health services (§ 441.15).

Section 1903(i)(1) for organ transplant procedures, and 1903(i)(5) for certain prescribed drugs (§§ 441.35 and 441.25).

Section 1903(i)(6) which prohibits (except in emergency situations) FFP in expenditures for inpatient hospital tests that are not ordered by the attending physician or other licensed practitioner (§ 441.12).

Section 1905(a)(4)(C) for family planning (§ 441.20).

Section 1905(a)(12) and (e) for optometric services (§ 441.30).

Section 1905(a)(17) and (m) for nurse-midwife services (§ 441.21).

Section 1905(a) following (a)(18), which prohibits FFP in expenditures for certain services (§ 441.13).

Section 1905 (a)(19) and 1915(g) for case management services (§ 441.18).

3. A new § 441.18 is added to subpart A to read as follows:

§ 441.18 Case management services.

(a) If a State plan provides for case management services, as defined in § 440.169 of this subchapter, the plan—

(1) Must allow individuals the free choice of any qualified Medicaid provider within the specified geographic area identified in the plan when obtaining case management services, in accordance with § 431.51 of this subchapter;

(2) Must not restrict an individual's access to other services under the plan through the use of case management services;

(3) Must not condition receipt of case management services on the receipt of other Medicaid services;

(4) Must indicate that case management services provided in accordance with section 1915(g) of the Act will not duplicate case management services provided under any home and community-based services waiver.

(5) Must prohibit providers of case management services from exercising the State agency's authority to authorize or deny the provision of other services under the plan;

(6) Must require providers to maintain case records for all recipients that document—

(i) The name of the recipient;

(ii) The date of service;

(iii) The name of the provider agency and the person providing the service;

(iv) The nature, extent, or units of service; and

(v) The place of service delivery;

(7) Must include a separate plan amendment for each group receiving case management services that—

(i) Defines the group (and any subgroups within the group) eligible to receive the services;

(ii) Identifies the geographic area to be served;

(iii) Describes the services furnished;

(iv) Specifies provider qualifications that are reasonably related to the type of case management services furnished; and

(v) Specifies the arrangements under which providers will be paid; and

(8) Must include a separate plan amendment for each subgroup within a group if any of the following differs among the subgroups:

(i) The services to be furnished;

(ii) The qualifications of providers; or

(iii) The arrangements under which providers will be paid.

(b) If the State limits qualified providers of case management services for target groups of developmentally disabled or chronically mentally ill individuals, in accordance with § 431.51(a)(4) of this subchapter, the plan must identify any limitations to be imposed on the providers and specify how these limitations enable providers to ensure that individuals within the target groups receive needed services.

(c) FFP is not available in expenditures for services defined in § 440.169 of this subchapter when—

(1) Case management activities are an integral component of another covered Medicaid service;

(2) Expenditures would duplicate payments made by another program authority for this same purpose; or

(3) Case management activities are intrinsic to the proper and efficient administration of the State plan.

PART 447—PAYMENTS FOR SERVICES

D. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new undesignated heading and a new § 447.327 are added to subpart F to read as follows:

Case Management Services

§ 447.327 Case management services: Upper limits of payment.

With respect to case management services defined in § 440.169 of this subchapter, furnished by institutional providers, clinics, physicians, or other practitioners, the agency—

(a) May pay the customary charge; and

(b) May not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.

(Catalog of Federal Domestic Assistance Program, No. 93.778, Medical Assistance Program)

Dated: April 26, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 14, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-25069 Filed 10-14-93; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PP Docket No. 93-253, FCC 93-455]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* (NPRM) that proposes to implement recent statutory changes to the Communications Act of 1934, as amended (Communications Act), that, among other things, provide the Commission with the authority to conduct auctions of the electromagnetic spectrum. The NPRM is necessary in order to comply with the mandates included in the Omnibus Budget Reconciliation Act of 1993. The NPRM proposes the policies and methodologies for a system of competitive bidding.

DATES: Comments due November 10, 1993. Reply Comments due November 24, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, Federal Communications Commission, at (202) 653–5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM, FCC 93–455, adopted September 23, 1993, and released October 12, 1993. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 236, Washington, DC 20554, telephone (202) 857–3800.

Summary of NPRM

1. The Notice of Proposed Rule Making (NPRM) implements provisions of the Omnibus Budget Reconciliation Act of 1993, which gives the Commission explicit authority to use competitive bidding to award licenses for use of the radio spectrum. The Commission proposes that auctions be limited to a) mutually exclusive applications, b) initial license applications (and not renewal or modification applications), and c) radio communications services that principally use their spectrum to provide service to subscribers for compensation. Based on those criteria, the Commission proposes to exclude most mass media services and services used by public safety entities, for example, from competitive bidding.

2. However, the Commission tentatively concludes that competitive bidding should begin immediately for Personal Communications Services (PCS), some services regulated by the Private Radio and Common Carrier Bureaus such as the Specialized Mobile Radio, Interactive Video Data Service, and certain cellular radio service applications.

3. The Commission proposes a variety of ways to meet the new law's requirement that small businesses, rural telephone companies, and businesses owned by women and minorities be given an opportunity to participate in the competitive bidding process. The Commission asks for specific comments on setting aside blocks of spectrum for these designated groups, including a proposal to set aside a MHz frequency block (Block C) and a 10 MHz block (block D) in context of broadband PCS to be licensed on a Basic Trading Area (BTA) basis. For both broadband and narrowband PCS, the Commission also proposes that these designated groups be able to pay for their licenses over time, and ask how tax certifies could be used to assist the designated groups as well.

4. The Commission seeks comment on alternative approaches for bidding, payment, deposits, safeguards, and bidder qualifications and eligibility. Further, the Commission tentatively concludes that although the FCC should have a broad menu of bidding methods, oral bidding should be the basic bidding method. The Commission also seeks comment on electronic bidding and sealed bidding. The Commission asks for comment on the general concept of bidding for groups of licenses—also known as combinatorial bidding—and reach tentative conclusions for implementing group bidding for broadband PCS licenses. Under group bidding, the Commission would accept bids both for licenses individually and for all the individual licenses in the block. Licenses would be awarded as a group if a bid for the licenses as a group exceeded the sum of the highest bids for the licenses individually. If the sum of the individual bids were greater than the highest bid for the group, licenses would be awarded individually.

5. The Commission asks how licenses should be offered when bidding is conducted sequentially, and propose that for PCS services, the largest markets be auctioned first. The Commission tentatively concludes that auction winners not designated by the Budget Act as deserving preferential treatment be required to pay in a lump sum upon license grant.

6. Bidding would be limited to qualified bidders. Specifically, in order to participate in an auction, the Commission proposes, among other things, that bidders would be required to tender in advance to the Commission a substantial upfront payment that, for the winning bidder, would also serve as either the sole or an additional financial qualification in the service subject to auction. The amount of the payment would vary with the license being auctioned, and the Commission would retain the upfront payments of auction winners even if they are later disqualified.

7. The Budget Act of 1993 requires the Commission to begin licensing PCS within 270 days of enactment, and the Commission proposes to use both oral and sealed bidding in licensing broadband PCS. Oral bidding would be used in all cases except for bids on groups of licenses. The Commission proposes to permit group bidding to award all of the 51 Major Trading Area (MTA) licenses on each of two 30 MHz spectrum blocks, thereby facilitating nationwide service.

8. The Commission asks for comment on whether this procedure should be used to facilitate grouping of PCS licenses with BTA service areas, and asks whether the Commission should accept sealed bids for all BTA licenses on an MTA basis and conduct oral auctions sequentially for individual BTA licenses. The Commission also seeks comment on the use of this combinatorial bidding to aggregate 10 MHz PCS licenses into 20 MHz PCS licenses into 20 MHz or 30 MHz blocks.

9. The Commission proposes measures to prevent unjust enrichment of parties obtaining licenses via auction as well as licenses granted by lottery. The Commission also seeks comment on performance requirements to ensure prompt delivery of service and to prevent warehousing of spectrum. Finally, the Commission seeks comment on procedures to prevent collusion among bidders.

10. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals contained in this NPRM. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IFRA and must be filed by the comment deadlines provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

A. Reason for Action

(i). This rule making proceeding is initiated to obtain comment regarding the implementation of a new section 309(i) and 309(j) of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (Budget Act).

B. Objectives

(ii). The Commission seeks to implement changes to the Communications Act that, among other things, provide the Commission with the authority to conduct auctions of electromagnetic spectrum, limit the Commission's authority to conduct lotteries and require certain anti-trafficking requirements in the context of lotteries. The Budget Act requires the Commission to complete this proceeding within 210 days of its enactment, or March 8, 1993.

C. Legal Basis

(iii). The NPRM is authorized under the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, title VI, section 6002, and sections 2(a), 4(i), 303(r), 309(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303(r), 309(i) and 309(j).

D. Reporting, Recordkeeping and Other Compliance Requirements

(iv). The proposals under consideration in this NPRM include the possibility of new reporting and recordkeeping requirements for a number of small business entities.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

(v). None.

F. Description, Potential Impact, and Number of Small Entities Involved

(vi). The rule changes proposed in this proceeding could affect small businesses if they have mutually exclusive applications for initial licenses or permits for a particular radio service accepted for filing by the Commission where the Commission has determined that, under Section 309(j), the particular spectrum is subject to competitive bidding. The NPRM proposes that mutually exclusive applications for licenses or permits in such radio services would be resolved by a system of competitive bidding rather than a system of random selection. In addition, the NPRM proposes certain antitrafficking requirements in the context of lotteries. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

(vii). The NPRM proposes certain preferential measures entities designated by the Budget Act of 1993 as deserving special consideration to ensure their economic opportunity, such as installment payment plans.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain the possibility of some new or modified form, information collection and/or record retention requirements, that may increase burden hours imposed on the public.

List of Subjects in 47 CFR Part 1

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–25436 Filed 10–14–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 930816–3216; I.D. 071993D]

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, notice of public meetings and request for comments.

SUMMARY: NMFS has received an application from the U.S. Department of the Navy for a Letter of Authorization that would allow the unintentional take of small numbers of pinnipeds and cetaceans incidental to the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA, over the next 5 years. NMFS by this notice, is proposing regulations that would govern that take. NMFS also announces the times, dates and locations for a public meeting under the Marine Mammal Protection Act in order to receive comments from the general public on the Navy application and the proposed regulations.

DATES: Comments must be postmarked no later than November 29, 1993. Public meetings on the proposed rule are scheduled as follows:

1. November 8, 1993, 6–10 p.m. Long Beach, CA.
2. November 15, 1993, 9:30 a.m.–4:30 p.m. Silver Spring, MD.

ADDRESSES: Written comments on the proposed rule should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the Environmental Assessment and Navy's application may be obtained by writing to this address or by telephoning the contact listed below.

The public meetings will be held at the following locations:

1. Silver Spring—Silver Spring Metro Center Building 4, Auditorium, 1301 East—West Highway, Silver Spring, MD.

2. Long Beach—Ramada Renaissance Hotel, 111 East Ocean Blvd. Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; the MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request by U.S. citizens engaged in a specific activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill.

Permission may be granted for periods up to 5 years if the Secretary finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the Secretary must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On May 13, 1993, NMFS received an application from the U.S. Department of the Navy for a Letter of Authorization under section 101(a)(5) of the MMPA and 50 CFR § 228.6 authorizing the take of small numbers of marine mammals, for a period of 5 years commencing February 1994, incidental to a wide variety of military projects involving the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center (NAWC), off Pt. Mugu, Ventura County, CA, seaward of the Channel Islands. This application was subsequently modified by letter on September 2, 1993.

As the U.S. Navy describes its proposed activities under the "Live Fire" testing program mandated by the National Defense Authorization Act (10 U.S.C. 139), ships and critical

components or systems constructed for the Navy must undergo shock tests prior to service with the fleet to determine the integrity of the structure and electronic systems that are vital to the overall function and performance of the vessel and its crew under wartime combat conditions. This is especially true when a new class of ship is constructed. The new ship must be subjected to a "near-miss" underwater explosion while its crew tracks airborne and waterborne targets in the area. These tests help the Navy identify weaknesses in the ship's design early in the construction of a new class of ship, which, when corrected, enhance the survivability of the ship, its systems, and most importantly, its crew. The design corrections and improvements are than applied to all follow-on ships of that class.

The shock trial is a complicated combat simulation that requires the participation of several Navy aircraft and ships. Their purpose is to challenge the shock trial ship's tracking and communications systems after the detonation. To ensure the safety of commercial aircraft and vessels, the Navy must maintain control of air and sea space where the trial is being conducted. In addition, the site must be close enough the repair facilities should the ship become disabled. Under normal conditions, for Navy ships homeported on the west coast, the designated site is the Outer Sea Test Range, under the control of the NAWC. The U.S. Navy anticipates that on an annual basis, no more than 10 projects involving underwater explosions will be conducted under the requested Letter of Authorization (Table 1).

The U.S. Navy has requested a take of four species of pinnipeds and 17 species (or species groups) of cetaceans by harassment, injury and death (Table 2). The proposed activities would occur in an area of a potentially high density of marine mammals. Potential impacts to marine mammals include both lethal and non-lethal injuries as well as physical and acoustic harassment. Injury or death may occur as a direct result of the explosive blast (concussion) itself. Injury may include damage to internal organs as well as to the auditory system. Harassment of marine mammals may occur as a result of non-injurious physiological responses to both the explosion-generated shockwave as well as to the acoustic signature of the detonation.

TABLE 1.—MAXIMUM ANTICIPATED ANNUAL UNDERWATER DETONATION REQUIREMENTS

Number of projects/ number of detonations per project	Maximum project charge weight lb/ (kg)	Total number of detonations
2/6	10,000/(4,536)	12.
2/1	1,200/(544)	2.
2/5	100/(45)	10.
2/5	10/(4.5)	10.
2/10	1/(0.45)	20.
Projects 10		Total 54.

Source: Naval Surface Warfare Center, Carderock Division, Underwater Explosions Research Department.

TABLE 2.—REQUESTED TAKE UNDER LETTER OF AUTHORIZATION: ESTIMATED MAXIMUM ANNUAL INCIDENTAL TAKE OF MARINE MAMMALS ASSUMING MAXIMUM UNDERWATER DETONATION REQUIREMENTS.

Incidental take	Lethal	Injury	Harassment
Pinnipeds:			
California sea lion	2	38	173
Harbor seal	2	16	68
Northern elephant seal	9	158	724
Northern fur seal	2	13	57
Odontocetes:			
Common dolphin	1	16	67
Striped dolphin	0	2	5
Risso's Dolphin	0	1	2
Pacific white-sided dolphin	3	52	236
Northern right whale dolphin	2	24	108
Dall's porpoise	0	6	18
Bottlenose dolphin	0	4	15
Killer whale	0	0	1
Sperm whale (e)	0	6	20
Beaked whales	0	0	3
Mysticetes:			
Minke Whale	0	0	4
Blue Whale (e)	0	1	11
Fin Whale (e)	0	0	6
Sei Whale (e)	0	0	1
Humpback Whale (e)	0	0	4
Gray Whale	0	3	40
Right Whale (e)	0	0	1

(e)=endangered species.

The Navy describes in its application efforts that will be made to minimize project related impacts to marine mammals (see below—Measures to Reduce Impacts). The Navy strongly believes that impacts can be held to an acceptably low level by mandating conservative safety ranges for marine mammal exclusion and by incorporating an active aerial survey monitoring effort in the program both prior to, and after detonation of explosives. The Navy states that tests will not be conducted if marine mammals, sea turtles, fish schools, or seabirds are detected within the testing zone, or if weather and sea conditions preclude adequate aerial surveillance. Also, if post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the Navy and NMFS and appropriate changes will be made.

Comments

On June 7, 1993 (58 FR 31944), NMFS published a notice of receipt of the Navy's application for a small take authorization and requested comments, information and suggestions concerning the request and the structure and content of the regulations governing the take. The comment period closed on July 7, 1993. During the comment period, NMFS received several hundred comments. These comments did not address either the contents of the application or the regulations as requested, but instead urged denial of the application. Many stated their opposition to the Navy's detonation of explosives at-sea and the resultant loss of marine life. Most of the concerns raised, such as impacts on marine mammal species and the unknown result from detonating explosives and of the chemically released by-products into surface waters on the oceanic ecosystem, were addressed in the application. These concerns have also been addressed in the Environmental Assessment (EA) prepared on this action under the National Environmental Policy Act (NEPA).

Summary of Proposed Rule

Specific regulations are proposed to govern the incidental taking of marine mammals during the detonation of conventional explosives in the Outer Sea Test Range off Pt. Mugu, CA. These regulations are proposed based on evidence submitted in an application from the U.S. Navy that the detonation of conventional explosives off the Channel Islands, CA, over the next 5 years may involve the incidental taking (harassment, injury or death) of marine

mammals. NMFS believes that the total taking would have a negligible impact on the species for which the take is requested, their habitat, and the availability of these species for subsistence uses. Although two of the species of pinnipeds on the Channel Islands, the northern fur seal and the harbor seal, are taken for subsistence in Alaska, an incidental take from the populations in the Channel Islands would not reduce the availability of these species for subsistence in Alaska. Therefore, NMFS has preliminarily determined that this incidental taking would not have an unmitigable adverse impact on the availability of marine mammals for subsistence by Alaska natives.

The proposed regulations would apply only to military projects involving the underwater detonation of conventional explosives in the offshore waters of the Outer Sea Test Range of the Naval Air Warfare Center, off Pt. Mugu, Ventura County, CA. All activities would have to be conducted in a manner that minimizes adverse effects on marine mammals authorized to be taken and their habitat and in conformance with any requirements in a Letter of Authorization issued under these regulations.

If final regulations are promulgated, NMFS will issue the U.S. Navy a 1-year Letter of Authorization. This Letter is the official document allowing the incidental taking of marine mammals. This Letter of Authorization will be renewed annually upon receipt of a report detailing activities conducted during the previous 12 months, including levels of taking of marine mammals, provided the required mitigation measures are undertaken and the annual taking authorizations are not exceeded. If a species' annual authorization is exceeded, NMFS will review the documentation submitted with the annual report to determine that the taking is not having more than a negligible impact on the species or stock involved.

The annual report must be submitted to the Assistant Administrator for Fisheries, NOAA (AA), not less than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year.

Any substantive changes to the conditions contained within the annual Letter of Authorization, including suspension or withdrawal, over the 5-year period the regulations are in effect will be subject to public review and comment unless NMFS determines that an emergency exists that necessitates immediate action. The proposed regulations would require the holder of the Letter of Authorization to cooperate with NMFS and any other Federal, state or local agency monitoring impacts resulting from this activity on these species. At its discretion, NMFS would place observers onboard either the fleet tug or the target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance and monitoring either prior to, during, or after explosives detonation.

Description of Habitat and Marine Mammals Affected by Military Weapons Testing at the Outer Sea Test Range

The Outer Sea Test Range is an area in the eastern North Pacific Ocean, seaward of the Channel Islands, CA, a minimum of 20 nautical miles (nm) (37 km) northwest of San Nicolas Island, 20 nm (37 km) south of San Miguel Island, and 12 nm (22 km) southwest of Santa Rosa Island. The area extends 60 nm (111 km) westward of San Nicolas Island to 120°45'W. longitude in the Outer Sea Test Range of the Naval Air Warfare Center, Ventura County, CA. Water depths in the test area range from approximately 200 to over 1,900 fathoms (366 to 3,475 m). Shallowest depths (<750 m) in the test area are associated with the Patton Ridge, identifiable as a rise oriented north-south and located nearly mid-range.

The following species/stocks of marine mammals are found in the Southern California Bight (SCB): (1) California sea lion (*Zalophus californianus*); (2) harbor seal (*Phoca vitulina*); (3) northern elephant seal (*Mironga anquistrostris*); (4) northern fur seal (*Callorhinus ursinus*); (5) Steller sea lions (*Eumetopias jubatus*); (6) Guadalupe fur seals (*Arctocephalus townsendi*); (7) common dolphin (*Delphinus delphis*); (8) striped dolphin (*Stenella coeruleoalba*); (9) Risso's dolphin (*Grampus griseus*); (10) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*); (11) northern right whale dolphin (*Lissodelphis borealis*); (12) Dall's porpoise (*Phocoenoides dalli*); (13) bottlenose dolphin (*Tursiops truncatus*); (14) killer whale (*Orcinus orca*); (15) sperm whale (*Physeter macrocephalus*); (16) beaked whales (seven species requested as a single group because of difficulty in identification including Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Hubb's beaked whale (*Mesoplodon carlhubbsi*), Blainville's beaked whale (*M. densirostris*), Ginkgo-toothed beaked whale (*M. ginkgodens*), Hector's beaked whale (*M. hectori*) and Stejneger's beaked whale (*M. stejnegeri*)); (17) minke whale (*Balaenoptera acutorostrata*); (18) blue whale (*Balaenoptera musculus*); (19) fin whale (*Balaenoptera physalus*); (20) sei whale (*Balaenoptera borealis*); (21) humpback whale (*Megaptera novaengliae*); (22) gray whale (*Eschrichtius robustus*); and (23) right whale (*Eubalaena glacialis*). However, because of low population estimates in the SCB and marine mammal monitoring measures planned in association with the tests, no impacts or incidental takes of Steller sea lions or Guadalupe fur seals are expected and incidental take authorizations have not been requested. A description of the SCB area and the biology and abundance of the marine mammal species in the SCB can be found in the EA prepared in association with this proposed activity. A copy of the EA is available upon request (see ADDRESSES).

Effects of Military Testing Activities on Marine Mammals

Potential impacts to marine mammals from explosives detonation include exposure to chemical by-products, lethal and injurious incidental take, as well as physical and acoustic harassment. Injury or death could occur as a direct result of the explosive blast (concussion) and resultant cavitation.[1] Injury could include damage to internal organs and/or the auditory system. Non-injuries harassment of marine mammals could occur as a result of physiological response to both the explosion-generated shockwave as well as to the acoustic signature of the detonation. Based upon information provided by the U.S. Navy, NMFS believes it is unlikely that injury will occur from exposure to the chemical by-products released into the surface waters.

Measures To Reduce Impacts

Because of the highly mobile nature of ship shock tests, successful avoidance of, or reduction in, the incidental taking of marine mammals is dependent upon the detection of marine mammals. Extensive pre-test surveys in the test area are being conducted in an effort to document on-range marine mammal seasonal abundance and to detect areas of high mammal density. Three 80 nm^2 (275 km^2) areas for ship shock tests will be identified prior to each test based on an analysis of the 1993 NMFS 12-month aerial survey results and historical marine mammal survey data. Intensive

[1] The area of cavitation is where the water pressure becomes extremely low with the passage of the negative shock wave that moves down from the surface. The water separates, producing a region of cavitation bubbles for a brief time. This volume of water then collapses and generates a weak positive pressure wave.

aerial surveys will be flown in the three targeted areas 1 month prior to the first scheduled shock test and the areas will subsequently be ranked from low to high with respect to marine mammal density. An intensive survey will be conducted in the primary test area 2 days prior to each scheduled shock test. If marine mammal density is high, the alternate secondary and tertiary areas will be surveyed to determine their short-term suitability for shock tests.

On test days, extensive aerial and surface surveillance will be conducted to monitor for the presence, behavior and condition of marine mammals before and after each detonation. Pre- and post-detonation aerial reconnaissance surveys will be conducted from a fixed-wing aircraft, Navy helicopters, and from the test vessel. If marine mammals, sea turtles, or endangered or threatened seabirds are seen within the 2-nm (3.7-km)-radius danger zone (for the 10,000-lb. (4,536-kg) charge), detonation of the charge will be delayed until the animals exit the danger area. Tests will not be conducted if marine mammals are detected within the danger zone. Also, tests will not be conducted when weather or sea conditions preclude adequate aerial surveillance. No detonations will be permitted without the concurrence of the Naval Air Warfare Station Ecologist assigned to the program as the Environmental Coordinator. Any dead marine mammals and turtles seen by aerial survey observers during the pre-test aerial survey (48 hours prior to test) will be documented and marked/tagged so that those animals that were dead prior to the test will not be included in incidental take numbers reported after the trial.

Monitoring and Reporting

After each detonation, an aerial reconnaissance survey of the shock zone, to 3 nm (5.6 km) radial distance from the detonation, will be conducted by NMFS Southwest Fisheries Science Center (SWFSC) scientists who will notify the Marine Animal Recovery Team (MART) personnel, onboard an independent recovery vessel, if any dead or injured marine animals are seen. The occurrence of live marine mammals, seabirds and sea turtles will also be documented by aerial and vessel survey personnel. Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured animals will be undertaken by MART. Necropsies will be performed and tissue samples taken from any dead marine mammals or sea turtles. Activities related to the monitoring of the Navy ship shock program will be authorized under these regulations and will not require a separate permit under section 104 of the MMPA.

If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed by the U.S. Navy and NMFS and appropriate changes may be made. Inter-agency coordination between the Navy and NMFS/SWFSC will ensure that the tests will proceed by the safest possible means.

Within 90 days after any detonation project, the Navy would have to submit a summary report to NMFS. This report must include the following information: (1) Date and time of the test; (2) a summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

An annual report must be submitted to NMFS no later than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year. This annual report must contain: (1) The date and time of all tests conducted during the previous calendar year; (2) a report on all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; (3) the results of the post-test monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone; and (4) the results of population assessment studies, if any, made on marine mammals in the SCB during the previous year.

Letter of Authorization

NMFS will renew the Letter of Authorization annually upon timely receipt of the summary and annual report, a determination that the maximum incidental take authorizations have not been exceeded, and that the mitigation measures have been undertaken. If one or more species' take levels were reached or exceeded during the previous year, NMFS will require the holder of the Letter of Authorization to provide additional documentation on the taking, and the measures that will be undertaken in the following year to prevent exceeding the authorized incidental take levels in the future.

NMFS will review these reports and if it is determined that the taking may be having more than a negligible impact on any species, or if the methods of taking, monitoring, or reporting are not being substantially complied with, NMFS may, under § 228.6(e), and after notice and comment in the **Federal Register**, withdraw or suspend the Letter of Authorization.

Conclusions

While NMFS believes that detonation of the larger (i.e., 1,200- and 10,000-lb. (544- and 4,536-kg)) charges may affect some marine mammals, the latest abundance and distribution estimates indicate that the taking will have a negligible impact on the populations of marine mammals inhabiting the waters of the SCB. NMFS concurs with the U.S. Navy that impacts can be mitigated by mandating conservative safety ranges for marine mammal exclusion, incorporating an active aerial survey monitoring effort in the program both prior to, and after detonation of explosives, and provided tests are not conducted whenever marine mammals are detected within the testing zone, or if weather and sea conditions preclude adequate aerial surveillance.

Classification

The AA has determined, based on an EA prepared by NMFS, that this action will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see ADDRESSES).

NMFS will be consulting with the U.S. Navy under section 7 of the ESA for this proposed rule. The requirements for mitigation, as well as monitoring tests, in conjunction with other existing regulations, are expected to provide adequate protection for listed species.

The AA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The proposed regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to

the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

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

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. The collections have been approved by the Office of Management and Budget under OMB Control No. 0648–0151.

The reporting burden for this collection is estimated to be approximately 27 hours per project, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attn: Paperwork Reduction Act Project 0648–0151.)

NMFS has preliminarily determined that this proposed rule may result in an impact on living marine resources that also reside within the coastal zone of the State of California, a State with an approved coastal zone management program under the Coastal Zone Management Act (CZMA). However, aerial monitoring and other mitigation measures that will be employed by the U.S. Navy prior to, and during, testing will result in a negligible impact on marine mammals and other marine life. The U.S. Navy will be submitting a consistency determination for this activity to the State of California's Division of Governmental Coordination for review pursuant to the CZMA section 307(c)(1) and 15 CFR part 930, subpart C. The Navy, under 15 CFR 930.40 (multiple Federal agency participation), will be the lead Federal agency for CZMA Federal consistency purposes.

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: October 8, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart E is added to read as follows:

Subpart E—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives

Sec.
228.41 Specified activity, geographical region and incidental take levels.
228.42 Effective dates.
228.43 Permissible methods of taking; mitigation.
228.44 Prohibitions.
228.45 Requirements for monitoring and reporting.
228.46 Renewal of Letter of Authorization.
228.47 Modifications to Letter of Authorization.

Subpart E—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives

§ 228.41 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to the following species and species groups:

	Lethal	Injury	Harassment
California Sea Lion	2	38	173
Harbor Seal	2	16	68
Northern Elephant Seal	9	158	724
Northern Fur Seal	2	13	57
Common Dolphin	1	16	67
Striped Dolphin	0	2	5
Risso's Dolphin	0	1	2
Pacific White-Sided Dolphin	3	52	236
Northern Rt. Whale Dolphin	2	24	108
Dall's Porpoise	0	6	18
Bottlenose Dolphin	0	4	15
Killer Whale	0	0	1
Sperm Whale	0	6	20
Beaked Whales	0	0	3
Minke Whale	0	0	4
Blue Whale	0	1	11
Fin Whale	0	0	6
Sei Whale	0	0	1
Humpback Whale	0	0	4
Gray Whale	0	3	40
Right Whale	0	0	1

§ 228.42 Effective dates.

Regulations in this subpart are effective from [date of PUBLICATION of the FINAL RULE IN THE **Federal Register**] through [DATE 5 years from date of publication of the final rule in the **Federal Register**].

§ 228.43 Permissible methods of taking; mitigation.

(a) U.S. citizens holding a Letter of Authorization issued pursuant to

§ 228.6 may incidentally, but not intentionally, take marine mammals by harassment, injury or killing in the course of the detonation of conventional explosives up to the following maximum annual level within the area described in § 228.41(a):

(1) 12 detonations of 10,000 lbs (4,536 kg);

(2) 2 detonations of 1,200 lbs (544 kg);

(3) 10 detonations of 100 lbs (45 kg);

(4) 10 detonations of 10 lbs (4.5 kg); and

(5) 20 detonations of 1 lb (0.45 kg), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone.

(2) If weather and/or sea conditions preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next project.

§ 228.44 Prohibitions.

Notwithstanding takings authorized by § 228.43 or by a Letter of Authorization issued under § 228.6, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional;

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued or renewed under § 228.6 or § 228.46; and

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whose taking authorization for the year has been reached.

§ 228.45 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA (Telephone: (310) 980–4001), at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate a qualified on-site individual(s) to record the effects of explosives detonation on marine mammals that inhabit the Outer Sea Test Range.

(c) The primary test area, and if necessary, secondary and tertiary test areas, in the Outer Sea Test Range, must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 48 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each test or project. Monitoring shall include, but not necessarily be limited to, aerial surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d)(1) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination, will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(2) Activities related to the monitoring described in paragraph (d)(1) of this section or the Letter of Authorization issued under this part may include the retention of marine mammals without the need for a separate scientific research permit. The use of such marine mammals in other scientific research may be authorized pursuant to 50 CFR parts 216 and 220.

(e) At its discretion, the National Marine Fisheries Service may place an observer on either the towing vessel, target vessel, or both, and on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(f) A summary report must be submitted to the Assistant Administrator for Fisheries, NOAA, within 90 days after the conclusion of any explosives detonation project. This report must include the following information:

(1) Date and time of the test(s);

(2) A summary of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations; and

(3) Results of the monitoring program including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the safety zone.

(g) An annual report must be submitted to the Assistant Administrator for Fisheries, NOAA, no later than 120 days prior to the date of expiration of the annual Letter of Authorization in order for issuance of a Letter of Authorization for the following year. This annual report must contain the following information:

(1) Date and time of all tests conducted under the expiring Letter of authorization;

(2) A report on all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations;

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone;

(4) If one or more species' take levels have been reached or exceeded during the previous year, additional documentation must be provided on the taking and a description of any measures that will be taken in the following year to prevent exceeding the authorized incidental take level.

(5) Results of any population assessment studies made on marine mammals in the Outer Sea Test Range during the previous year.

§ 228.46 Renewal of Letter of Authorization.

(a) A Letter of Authorization issued under § 228.6 for the activity identified in § 228.41(a) will be renewed annual upon:

(1) Timely receipt of the reports required under § 228.45(f) and (g) which have been reviewed by the Assistant Administrator for Fisheries, NOAA, and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 228.41(b) will not be exceeded; and

(3) A determination that the mitigation measures required under

§ 228.43(b) and the Letter of Authorization have been undertaken.

(b) If a species' annual authorization is exceeded, the National Marine Fisheries Service will review the documentation submitted with the annual report required under § 228.45(g), to determine that the taking is not having more than a negligible impact on the species of stock involved.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register**.

§ 228.47 Modifications to Letter of Authorization.

(a) In addition to complying with the provisions of § 228.6, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 228.6 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 228.46, without modification, is not considered a substantive modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 228.41, or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 228.41, the Letter of Authorization issued pursuant to § 228.6, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 93-25276 Filed 10-14-93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 675

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 24 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before December 7, 1993.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel).

Copies of the amendment and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan Salveson, National Marine Fisheries Service, Alaska Region, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 24 would: (1) Establish explicit allocations of the BSAI Pacific cod total allowable catch among vessels using trawl, jig, and hook-and-line or pot gear, and (2) authorize the seasonal apportionment of the amount of Pacific cod allocated to different gear groups.

A proposed rule to establish gear allocations of Pacific cod and seasonal apportionments of the amount of Pacific cod allocated to vessels using hood-and-line or pot gear has been submitted for Secretarial review and approval, under the authority provided under proposed Amendment 24.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 8, 1993.

Joe P. Clem,

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

[FR Doc. 93-25266 Filed 10-8-93; 3:40 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

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

Forest Service

Newberry National Volcanic Monument Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on October 28, 1993 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: Reviewing the preliminary draft Environmental Impact Statement for the Monument, and updates on staff reports from the summer season.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383-4702 or 383-4704.

Dated: October 5, 1993.

Michael C. Johnson,

Acting Deschutes National Forest Supervisor.

[FR Doc. 93-25353 Filed 10-14-93; 8:45 am]

BILLING CODE 3410-11-M

North Fork John Day Wild and Scenic River Management Plan, Umatilla and Wallowa-Whitman National Forest, Baker, Grant, and Umatilla Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On September 7 and September 13, 1993, Umatilla and Wallowa-Whitman Forest Supervisors, Jeff D. Blackwood and R.M. Richmond, made a joint decision to adopt into their Forest Plans the North Fork John Day Wild and Scenic River Management Plan which required amendments to the Umatilla and Wallowa-Whitman Forest Plans.

This plan identifies use levels, facility development levels, resource protection measures, and sets the general management direction for managing the North Fork John Day Wild and Scenic River. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the North Fork John Day River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the North Fork John Day Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the East Oregonian or Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the North Fork John Day Wild and Scenic River Management Plan is available for the public review at the Umatilla National Forest Supervisor's Office in Pendleton, Oregon or Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 7 days following publication of the legal notice of the decision in the East Oregonian or Baker City Herald.

FOR FURTHER INFORMATION CONTACT: Marty Gardner, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523-6391.

Dated: September 30, 1993.

Jeff D. Blackwood,

Forest Supervisor, Umatilla National Forest.

Dated: September 22, 1993.

John W. Austin,

Acting Forest Supervisor, Wallowa-Whitman National Forest.

[FR Doc. 93-25305 Filed 10-14-93; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, November 3, 1993, at the NationsBank Tower, 600 Peachtree Street, 52nd Floor Conference Room A, Atlanta, Georgia 30308. The purpose of this meeting is: (1) To discuss the status of the SACs and the Commission; (2) to hear a report on civil rights progress and/or problems in the State and Nation; (3) to discuss the Affirmative Action (AA) and Equal Opportunity (EO) plans of the Atlanta Committee for the Olympic Games (ACOG) as they relate to minorities and women; and (4) discuss possible topics for next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dale M. Schwartz, 404-657-8097 or Bobby D. Doctor, Director of the Southern Regional Office, 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 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, October 6, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-25272 Filed 10-14-93; 8:45 am]

BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon on Thursday, November 18, 1993, at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor Conference Room, Honolulu,

Hawaii 96815. The purpose of the meeting is to provide orientation for new members, discuss civil rights issues, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Andre S. Tatibouet or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 8, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25379 Filed 10–14–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory committee will be convened at 9:30 a.m. and adjourn at 5:30 p.m. on Tuesday, November 9, 1993, in the Third Floor Auditorium of the Chemical Bank Building, 270 Park Avenue (between 47th and 48th Streets) in New York City, New York 10017. The purposes of the meeting are to orient new members and hold a forum on intergroup cooperation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Setsuko M. Nishi or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 8, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25380 Filed 10–14–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100693B]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Law Enforcement Advisory Panel will meet on October 21–22, 1993, at the San Antonio Marriott Riverwalk Hotel, 711 East Riverwalk, San Antonio, TX; telephone: (210) 224–4555. The meeting will begin on October 21 at 8:30 a.m. and continue until 5 p.m. and on October 22 at 8 a.m. until 12:00 noon.

The agenda items are as follows:

(1) Discuss the Prohibition of the Use of Bleach in Taking Spiny Lobsters;

(2) Review Draft Amendment #7 to the Fishery Management Plan for Coastal Migratory Pelagics (which involves commercial king mackerel allocations off South Florida);

(3) Review Draft Amendment #2 to the Coral Fishery Management Plan to manage the harvest of live rock;

(4) Review Draft Amendment #8 to the Reef Fish Fishery Management Plan which encompasses effort management for the red snapper fishery through framework measures, license limitation or individual transferable quotas (ITQs); and

(5) An Extension of the Reef Fish Permit Moratorium.

Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above address by October 14.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: October 7, 1993.

Joe P. Clem,

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

[FR Doc. 93–25302 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals; Application for Public Display Permit

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

ACTION: Application for Public Display Permit, James W. Tiebor (P196A).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* James W. Tiebor, dba Leisure Connection, Leienfelsstr. 26, 8000 Munich 60, Germany.

2. *Type of Permit:* Public Display.

3. *Number and Name of Animals:* Two California sea lions (Zalophus californianus) from captive stock.

The applicant requests authorization to obtain permanent custody of two male California sea lions, currently in the custody of Dinnes Memorial Veterinary Hospital, at Hawk's Cay Resort, Marathon, Florida, for the purposes of public display at Europa*Park, Rust, Germany.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to 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, NMFS, NOAA, U.S. Department of Commerce, Silver Spring, MD 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 a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the following offices:

Permits Division, Office of Protected resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: October 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–25304 Filed 10–14–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain limits are being adjusted, variously, for carryforward used, swing, carryover and special shift.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 52619, published on November 4, 1992.

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

October 8, 1993.

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 October 29, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 15, 1993, you are directed to adjust the limits for the following categories, as provided by the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Group I 200–229, 300–326, 360–363, 369–O [2], 400–414, 464–469, 600–629, 665–669 and 670–O [3], as a group.	402,457,580 square meters equivalent.
Sublevels within Group I	
200	441,595 kilograms.
201	1,528,093 kilograms.
313	43,614,071 square meters.
314	26,340,731 square meters.
315	17,902,014 square meters.
611	3,553,739 square meters.
613/614	6,353,655 square meters.
619/620	96,250,720 square meters.
624	7,979,760 square meters.
625/626/627/628/629.	14,749,094 square meters.
Group II 237, 239, 330–359, 431–459 and 630–659, as a group.	558,115,273 square meters equivalent.
Subgroup within Group II 333/334/335, 336, 341, 350 and 448, as a group.	11,807,272 square meters equivalent.
Sublevels within Group II	
237	57,867 dozen.
239	966,479 kilograms.
333/334/335	259,262 dozen of which not more than 132,512 dozen shall be in Category 335.
336	42,871 dozen.
338/339	1,141,504 dozen.
340	646,269 dozen of which not more than 337,283 dozen shall be in Category 340–D [4].
341	179,021 dozen.
342/642	208,383 dozen.
345	112,987 dozen.
347/348	455,325 dozen.
350	16,083 dozen.
351/651	218,911 dozen.
352	170,351 dozen.
353/354/653/654	249,858 dozen.
433	14,205 dozen.
434	7,355 dozen.
435	35,538 dozen.
436	15,184 dozen.
442	51,315 dozen.
443	338,159 numbers.
444	54,364 numbers.
445/446	53,292 dozen.
448	36,100 dozen.
459–W [5]	96,749 kilograms.
631	290,324 dozen pairs.
632	1,537,965 dozen pairs.
633/634/635	1,358,750 dozen of which not more than 154,381 dozen shall be in Category 633 and not more than 575,327 dozen shall be in Category 635.
636	280;914 dozen.
640–D [6]	2,989,227 dozen.
641	1,077,958 dozen of which not more than 40,718 dozen shall be in Category 641–Y [7].
647/648	1,287,261 dozen.
650	23,537 dozen.
659–H [8]	1,286,095 kilograms.
Sublevel within Group III	
835	29,916 dozen.
Group VI 369–L/670–L/870 [9].	57,320,432 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 5601.21.0090.

[3] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[5] Category 459–W: only HTS number 6505.90.4090.

[6] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[7] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

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. 93-25265 Filed 10-14-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

October 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 53475, published on November 10, 1992.

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

October 8, 1993.

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 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 12, 1993, you are directed to amend further the November 4, 1992 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Thailand:

Category	Twelve-month limit [1]
Levels in Group I	
604	541,013 kilograms of which not more than 360,676 kilograms shall be in Category 604-A [2].
607	2,266,730 kilograms.
611	13,098,084 square meters.
619	5,410,134 square meters.
Sublevels in Group II	
340	209,327 dozen.
347/348/847	522,180 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 604-A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-25267 Filed 10-14-93; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On August 20, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 44329) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Insulation Tape, Electrical
5970-00-150-2009

Services

Grounds Maintenance, Marine Corps Air Station, Buildings 80, 154, 155 and 2000, Cherry Point, North Carolina

Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Batesville, Arkansas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-25373 Filed 10-14-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List sleeping shirts to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On June 11, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 32656) of the proposed addition of these shirts to the Procurement List. Comments were received from the current contractor for the shirt, both directly and through a Member of Congress. The contractor claimed that losing the ability to supply the shirt to the Government would deprive it of a large portion of its total sales. It also indicated that it has recently experienced an extended period of financial losses and needs the contract, on which it has just begun producing, to rebuild its work force and recoup its startup costs for the contract. The contractor further noted that it is in a labor surplus area and the Committee's action would result in unemployment for many of its workers. The contractor claimed that it needs to supply 100% of the Government's requirement for the shirt to make its competitively bid price cost effective.

The impact figures the contractor supplied presume that the contractor would lose the ability to supply all of the Government requirement for the shirt. Moreover, the contractor may have perceived that the addition would affect its current contract. When an item is included on the Committee's Procurement List, only future procurements of that item are affected. Consequently, the contractor will be able to complete its contract and amortize its startup costs, if it can do so during the current contract.

Regarding startup costs, the Committee does not consider the loss of an opportunity to recoup startup costs through subsequent contracts to constitute severe adverse impact because no company is guaranteed a contract under the competitive bidding system, so any contractor who intends to amortize its startup costs on subsequent Government contracts is taking a business risk that it will lose this opportunity if it fails to win the succeeding contracts. Additionally, the Committee's initial proposal was to add only 50 percent of the Government's requirement to the Procurement List. Because of potential impact on the contractor, the Committee has decided to reduce the portion added to the Procurement List to 40 percent of the Government requirement. Loss of sales for the portion to be added does not, in the Committee's view, constitute severe adverse impact on the contractor.

As the portion to be added to the Procurement List has been reduced to 40 percent of the Government requirement, the loss of employment predicted by the contractor will also be significantly reduced. The Committee feels that the possible loss of employment by some of the contractor's workers is outweighed by the creation of jobs for people with severe disabilities, whose unemployment rate exceeds 65 percent.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Shirt, Sleeping
8415-00-890-2099
8415-00-890-2100
8415-00-890-2101
8415-00-890-2102
8415-00-890-2103
8415-00-935-6855
(40% of the Government's requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-25374 Filed 10-14-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial, Naval Hospital and Building 15, Camp Lejeune, North Carolina
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25375 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the procurement list services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial, 185th Air National Guard Base, Sioux Gateway Airport, Sioux City, Iowa
Nonprofit Agency: Wall Street Mission, Sioux City, Iowa
Janitorial/Custodial, U.S. Naval Home, Gulfport, Mississippi,
Nonprofit Agency: Allied Enterprises of Harrison County, Long Beach, Mississippi
Janitorial/Custodial, Air Force Inspection and Safety Agency, Building 24499 Kirtland Air Force Base, New Mexico, Nonprofit Agency: The Rehabilitation Center, Inc., Albuquerque, New Mexico
Janitorial/Custodial, U.S. Army Reserve Center, 10031 E. Northwest Highway, Dallas, Texas
Nonprofit Agency: Fairweather Associates, Inc., Dallas, Texas
Janitorial/Grounds Maintenance, for the following locations:
USARC #1, 2010 Harry Wurzbach Highway, San Antonio, Texas
USARC #2, 432 Boswell Street, San Antonio, Texas
USARC #3, 600 Callaghan Road, San Antonio, Texas
USARC #4, 1920 Harry Wurzbach Highway, San Antonio, Texas
USARC #5, 5 Arvin Oaks, 1505 Harry Wurzbach Highway, San Antonio, Texas
U.S. Army Reserve Facility, MICTF, Building 6120, Camp Bullis, Texas
Nonprofit Agency: Goodwill Industries of San Antonio, San Antonio, Texas
Janitorial/Minor Maintenance, Federal Building and U.S. Post Office, Oxford, Mississippi
Nonprofit Agency: Allied Enterprises of Oxford, Oxford, Mississippi
Mailroom Operation, Federal Highway Administration, 555 Zang Street (Lakewood County), Denver, Colorado
Nonprofit Agency: Bayaud Industries, Inc., Denver, Colorado
Mailroom Operation, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia
Nonprofit Agency: Louise W. Eggleston Center, Inc., Norfolk, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–25376 Filed 10–14–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology, DOD.

ACTION: Notice of meeting.

In compliance with section 10(a)(20 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board.

Name of Committee: Armed Forces Institute of Pathology Scientific Advisory Board.

Date: November 4 and 5, 1993.

Time: 0800 hours.

Place: Director's Conference room, Armed Forces Institute of Pathology, Washington, DC 20306–6000.

This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education, and research. The Executive Secretary from whom substantive program information may be obtained from Colonel Richard C. Platte, Executive Officer,

Armed Forces Institute of Pathology, Washington, DC 20306-6000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-25305 Filed 10-14-93; 8:45 am]

BILLING CODE 5000-03-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, 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 November 15, 1993.

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 Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director of the Information Resources Management Service, 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 Cary Green at the address specified above.

Dated: October 12, 1993.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: New
Title: Noncompeting Continuation Application for Grants Under the Student Literacy Corps and Student Mentoring Corps Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 174
Burden Hours: 1392
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The information is required to award noncompeting continuation grants to non-profit institutions under the Student Literacy Corps and Student Mentoring Corps Program. The information will be reviewed by the Department in order to continue the funding of multiyear grantees for the next funding period.

Office of Educational Research and Improvement

Type of Review: New
Title: Star Schools Evaluation
Frequency: One time
Affected Public: Individuals or households; state or local governments
Reporting Burden:
Responses: 2,100
Burden Hours: 1,074
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to provide substantial information about Star Schools services, how they are distributed, and with what perceived effects. The Department will use the information to monitor the implementation and effects of the program.

[FR Doc. 93-25360 Filed 10-14-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 15, 1993. if you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Office of Energy Markets and End Use.
2. EIA-28.
3. 1905-0149.
4. Financial Reporting System Survey.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 25 respondents.
10. 1 response.
11. 689 hours per response.
12. 17,255 hours.
13. This survey provides data to evaluate the energy industry's competitive environment, and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 25 major energy producers are published annually for both private and public sector use.

Statutory Authority:

Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96-511), which amended chapter 35 of title 44 United States Code (see 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, October 6, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-25348 Filed 10-14-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 11426-000 Pennsylvania]

T.A. Keck, III and H.S. Keck; Availability of Draft Environmental Assessment

October 8, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission; (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Blackstone Mill Project, located on East Mahantango Creek, in Dauphin County, Pennsylvania and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the existing unlicensed project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 11426 to all comments. For further information, please contact John Smith, Environmental Coordinator, at (202) 219-2460.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25286 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-00027T Oklahoma-54]

Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 8, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Booch Sand Formation, underlying a portion of Pittsburg County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the E/2 of Section 6, Township 6 North, Range 16 East, E/2 of Section 31 and all of Section 32, Township 7 North, Range 16 East, Pittsburg County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25287 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-00028T Oklahoma-53]

Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 8, 1993.

Take notice that on October 4, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Booch Sand Formation, underlying a portion of Pittsburgh County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the E/2 of the NE/4 and S/2 of Section 13, and all of Section 24, Township 6 North, Range 16 East, and all of Sections 7 and 18, Township 6 North, Range 17 East, Pittsburgh County, Oklahoma. There are Indian leases included in the recommended area.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25288 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL93-1-001]

Post-Employment Benefits Other Than Pensions; Order Denying Rehearing and Granting in Part Requests for Clarification

Issued: October 6, 1993.

On December 17, 1992, the Federal Energy Regulatory Commission (Commission) issued a statement of policy in this proceeding.[1] Three applications for rehearing were filed, each requesting clarification in certain respects,[2] and two separate requests for

[1] Post-Employment Benefits Other Than Pensions, Statement of Policy, Docket No. PL93-1-000, 61 FERC ¶ 61,330 (1992).

[2] City of Danville Gas Department and Blue Ridge Power Agency ("City of Danville"); a group of

Continued

clarification were received.[3] For the reasons appearing below, the Commission denies rehearing of its policy statement, and clarifies its policy statement to the extent reflected herein.

Background

The December 17, 1992 statement of policy in this proceeding addresses the Commission's general policy regarding the recovery through rates of the accrued cost of post-employment benefits other than pensions of employees of natural gas pipeline companies and public utilities subject to the Commission's jurisdiction, as well as certain accounting issues related thereto. The statement is premised upon the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Employment Benefits Other Than Pensions (SFAS 106).

As reflected in the statement of policy, the Commission's policy shall be to recognize, as a component of jurisdictional cost-based rates of natural gas pipeline companies and public utilities under its jurisdiction, and oil pipelines should they elect to comply with this statement, allowances for prudently incurred costs of such benefits of company employees when determined on an accrual basis that are consistent with the accounting principles set forth in SFAS 106 provided the following conditions are met: (1) The company must agree to make cash deposits to an irrevocable external trust fund equal to the annual test period allowance for the cost of such benefits; and (2) the company must maximize the use of income tax deductions for contributions to the trust fund. If tax deductions are not available for some portion of currently funded amounts, deferred income tax accounting must be followed for the tax effects of such transactions.

Under the Policy Statement a company may defer the jurisdictional portion of the difference between the costs determined pursuant to accounting principles previously followed and SFAS 106 accruals from the time it adopts SFAS 106 until the company files such general rate case and places such rates into effect. The regulatory asset (or liability) thus created is to be amortized over a period not to exceed twenty years beyond the SFAS 106 adoption date. Amortization of the regulatory asset (or liability) will be eligible for recovery in future rates. A company must file a general rate change within three years of its adoption of SFAS 106 accounting if it seeks inclusion of these costs in its rate levels.

Applications for Rehearing

Electric Consumers seek rehearing on two points. First, Electric Consumers argue that electric utilities should not be allowed to file stand-alone PBOP rate filings. Second, Electric Consumers contend that the amortization period of the regulatory asset created by deferral of the filing to recover PBOPs should begin only after the Commission has issued a final order approving inclusion of PBOP costs in wholesale rates, and should extend 20 years from that date.

As to the first issue raised by Electric Consumers, it is the intent of the Commission, in general, to allow recovery of accrued PBOP costs in connection with a general rate filing. However, there may be situations in which stand-alone rate filings are appropriate, based upon a showing by the filing company of exceptional circumstances. A natural gas company or public utility will have the burden to justify such a filing.[4] Rehearing is denied as to this issue.

Rehearing of the second issued raised by Electric Consumers as to the amortization period for the regulatory asset is likewise denied. Electric Consumers are referring to the regulatory asset that may be recorded under the policy statement for the difference between the PBOP costs determined pursuant to accounting principles previously followed and SFAS 106 accruals, from the time SFAS 106 is adopted until the time rates are placed into effect that include the SFAS 106 cost levels. The Policy Statement requires the regulatory asset (or liability) to be amortized over a period to be determined in the rate proceeding, but in no event to exceed twenty years beyond the SFAS 106 adoption date. The use of 20 years from the date of adoption of SFAS 106, coupled with the requirement that a utility seek recovery of any deferred costs within three years, results in a maximum amortization period of between 17 and 20 years. While the Commission would consider a shorter period, a maximum recovery period of 17 to 20 years is not unreasonable. Further, an extension of the recovery period for deferred PBOP costs beyond 20 years from the date of adoption of SFAS 106 would make it more difficult to assess whether recognition of the regulatory asset is appropriate. There is no compelling need to introduce such an uncertainty into the financial statements prepared by companies subject to the Commission's jurisdiction.

NAGC seeks rehearing on the grounds that, by issuing the policy statement, the Commission has promulgated an unlawful legislative rule in violation of the Administrative Procedure Act.[5] The Commission does not agree with NAGC's comments. As the Commission stated in the December 17 policy statement:[6]

> The purpose of this policy statement is to provide guidance for the efficient disposition of pending or future cases which include PBOPs as a component of the cost of service and to provide a statement of Commission intent to permit recovery in future rates of PBOP costs appropriately deferred. The Commission is mindful that a general policy statement is an articulation of the Commission's intention, which will be followed unless particular circumstances demonstrate the policy to be inappropriate. *Where, as here, the Commission has adopted a general statement of Commission policy, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases.*

The Commission's statement of policy is plainly not a rule issued in violation of the Administrative Procedure Act. Therefore, rehearing is denied on this issue.

NAGC next argues that the Commission has ignored its comments in promulgating the statement of policy. Many of the arguments advanced by NAGC were, in the main, duplicative of those advanced by other commenters. The Commission's discussion of these comments apply equally to NAGC's comments. The statement of policy did in fact address the comments of NAGC.[7] Rehearing of this issue is denied.

The City of Danville applied for rehearing "for the reasons set forth in

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electric consumers, consisting of the National Rural Electric Cooperative Association, Allegheny Electric Cooperative, Inc., Chicopee Municipal Lighting Plant and the City of Chicopee, MA, Golden Spread Electric Cooperative, Inc., Holy Cross electric Association, Inc., the Cities of Newark, Milford, Seafood, New Castle and Lewes, DE, and the Towns of Smyrna , Clayton and Middletown, DE, Seminole Electric Cooperative, Inc., and the Town of Wallingford, CT (collectively, "Electric Consumers"); and the National Association of Gas Consumers ("NAGC"), "an association of small municipal gas distribution utilities which purchase wholesale gas from natural gas companies under rates regulated by the Commission pursuant to the Natural Gas Act." (NAGC Application for Rehearing, p. 1, n. 1.)

[3] Edison Electric Institute ("EEI"), and Central and South West Corporation ("CSW System").

[4] It would not be appropriate at this time for the Commission to attempt to delineate all the circumstances which may be considered exceptional. These matters will be addressed on a case-by-case basis if any jurisdictional company makes such a stand-alone filing.

[5] 5 U.S.C.A. 553 (1992)

[6] *Id.*, at p. 62,200, emphasis added.

[7] In fact, the Commission specifically referred to the comments of NAGC. *See* 61 FERC ¶ 61,330 at p. 62,204, n. 17.

the * * * Reply Brief of Blue Ridge Power Agency, (*et al.*) on Revenue Requirements Issues filed January 15, 1993 in [Appalachian Power Company] Federal Energy Regulatory Commission Docket Nos. ER92-323-000 and ER92-324-000 * * *." In the Reply Brief in the *Appalachian* case, and in its motion to file supplemental information in furtherance of its request for rehearing, filed February 22, 1993, the City of Danville refers to meetings between the Commissioners, Commission staff and industry representatives concerning the effect of SFAS 106 prior to the Commission notice, issued October 21, 1992, requesting comments on the INGAA request for policy statement. Certain documents are attached to the pleadings of the City of Danville referring to such meetings. Clearly, neither the Commissioners nor the Commission staff are precluded from informal discussions of matters of concern to the industries it regulates.[8] Based on a review of the documents provided by the City of Danville, the Commission concludes that nothing occurred other than permissible, general background discussions.

NAGC claims that meetings between interested persons and the Commission and its staff shows that the Commission had already made up its mind as to the treatment of PBOP accruals. The record in this proceeding indicates otherwise as does the statement of policy itself. First, the meetings and correspondence to which NAGC refers took place prior to the issuance of even a request for comments on the INGAA petition. Second, the Commission received some 77 sets of individual comments on the INGAA proposal, which were considered and discussed in the statement of policy issued December 16, 1992. Third, the Commission modified the request of INGAA based on the comments it received.[9] Thus, it is inaccurate, at best, to say that the Commission had already decided the issues prior to requesting comments on the proposed policy statement.[10]

The City of Danville further incorporated the request for rehearing and clarification of Electric Consumers, and sought assurance that the policy statement is not dispositive of issues in on-going cases. The City of Danville is correct in this regard. On-going cases will be decided on the basis of record evidence in those cases. The policy statement merely evidences the Commission's intent not to preclude recovery of PBOP costs on an accrual basis. Record evidence in individual proceedings will still be required to justify the level of and recovery of accrued PBOPs as with any other item of cost.[11]

Requests for Clarification

EEI and CSW System each seek clarification of the three-year filing requirement for recovery of SFAS 106 PBOP costs. CSW System states:

> The CSW System desires an interpretation of the three year filing requirement * * *. The CSW System feels that it is the Commission's intentions to limit the period of SFAS No. 106 cost deferrals and therefore the Commission wishes to require a jurisdictional company to file a general rate case within three years if that company is deferring SFAS No. 106 costs in excess of costs determined by current accounting principles. The CSW System does not believe it is the Commission's intentions to have all jurisdictional companies file a general rate case within three years. If a company wishes to expense and not defer the increase in costs and therefore delay the timing of a general rate case and as a result delay the recovery of SFAS No. 106 costs in rates then that should be a decision left to the management of the company. (Request, p. 1.)

The CSW System has correctly interpreted the Policy Statement. The Commission has not precluded the recovery of future costs determined in accordance with SFAS No. 106.

Electric Consumers request confirmation that, notwithstanding the Policy Statement, any Commission decision to include PBOP costs in wholesale rates must be firmly grounded upon a substantial and fully developed record, with the burden of proof placed upon the public utility that shifts to the SFAS 106 method. (EC Request, pp 4, 8-9) Electric Consumers also seek clarification that a utility's accrued PBOP costs are not presumptively prudent. (EC Request, p. 10) The Commission does not intend to treat PBOP costs any differently than other costs for which a company seeks recovery in rate levels. PBOP costs will receive the same level of scrutiny as salaries and wages, depreciation, pensions, decommissioning and all other costs that comprise a company's cost of service. A company seeking a change in rates will bear the burden of proof to justify the requested rate levels, regardless of whether it has measured PBOP costs on an accrual, cash or some other method.

Electric Consumers request that the Commission adopt a true-up requirement that will address ratemaking concerns instead of the SFAS 106 reconciliation method for over accruals. Electric Consumers argue that SFAS 106 does not require any reconciliation of a company's actual PBOP expenditures with that company's estimates of future PBOP costs until there is an actuarial gain or loss greater than 10 percent of net program liabilities over the entire period.

SFAS 106 relies on a basic premise of generally accepted accounting principles that accrual accounting provides more relevant and useful information than does cash basis accounting. In applying accrual accounting to post-employment benefits, SFAS 106 adopts the fundamental aspect of delayed recognition. This means that certain changes in the obligation for post-employment benefits, including changes arising as a result of a plan initiation or amendment, and certain changes in the value of plan assets set aside to meet that obligation, are not recognized as they occur. Rather, those changes are recognized systematically over future periods. Although SFAS 106 places certain maximum limitations on the extent to which those changes may be deferred, such as the 10 percent requirement for reconciliation to which Electric Consumers refer, earlier recognition is permitted. In other words, it does not bar recognition of actuarial gains or losses before the 10 percent threshold is reached and in some cases earlier recognition may be entirely appropriate. A company requesting rate recovery of PBOP costs determined in accordance with the principles contained in SFAS 106 will have to fully support and justify all of the component parts of its estimate, including its practices with respect to actuarial gains and losses. Thus, we do not believe that the delayed recognition aspect of SFAS 106, including the 10 percent corridor applicable to actuarial gains and losses, deprives this Commission or interested parties from addressing ratemaking concerns in connection with requests for recovery of PBOP costs.

[8] *See, e.g.*, Louisiana Association of Independent Producers and Royalty Owners v. FERC, 958 F.2d 1101, 1112-13 (D.C. Cir. 1992) (discussions between agency and industry officials involving general problems in the industry are not prohibited by the fact that a case-specific application is pending).

[9] Compare, *e.g.*, the requirement of external funding and the deferred income tax requirement of the statement of policy with the petition of INGAA.

[10] No claim seems to be made by the City of Danville or NAGC that there was a violation of the Commission's *ex parte* rules. Indeed, there were no prohibited *ex parte* communications, since there was no on-the-record proceeding at the time the contacts were made. *See* 18 C.F.R. § 358-2201(a) (1993).

[11] The Commission notes that it was not its intention to shift the burden of proof from the applicant in justifying its proffered recovery mechanism. *See* requests for clarification of Electric Consumers and NAGC.

Electric Consumers request that the Commission clarify that it will allow a utility to have the use of any non-deductible PBOP amounts, with all tax-deductible amounts continuing to go to the external fund, but requiring that all such non-deductible amounts be deducted from that company's rate base. In the Policy Statement, the Commission found that utilities may elect to recover PBOPs on an accrual basis if they commit to make cash deposits equal to amounts that are proportional, and on an annual basis equal, to the annual test period allowance (*i.e.*. amounts which include both the tax-deductible portion as well as the non-deductible portion) to an irrevocable external trust fund which is outside the company's control and not available for general corporate purposes. The Commission requires companies to commit to such full external funding because it wants to ensure that amounts paid by customers for PBOP costs are actually used for that purpose or, in the event funds are not so used, to ensure that customers will obtain refunds of any excess amounts included in the fund. As noted in the Policy Statement and restated here, the earning rate for external funding may be lower than the effective earning rate that could be realized from internal funds. However, the Commission believes that fund security is more important than earning rates in this instance and it will therefore require full external funding.

Finally, Electric Consumers request clarification of how refunds related to PBOP costs which were over-accrued will be made to ratepayers from the external trust fund, and who bears the burden of showing that a refund is required due to overfunding. In the Policy Statement, the Commission stated that disbursements from the irrevocable trust could be made for only three reasons, one of which was "refunds to customers pursuant to a *Commission-approved refund plan* in the event the funds are not to be paid to employees." [12] A Commission-approved refund plan could result from several different types of proceedings each of which may have different procedural requirements and allocations of the burden of proof. Such proceedings might include, for example: a unilateral, fully supported pipeline or public utility filing justifying the refund of a portion of the trust; a Commission accounting audit determining the plan was overfunded and refunds were due; a complaint; or as an issue in a general Natural Gas Act section 4(e) or Federal Power Act section 205(e) rate case. The Commission thus clarifies that refund plans will be evaluated on a case-by-case basis, consistent with the type of proceeding in which the refund issue is developed.

The Commission orders

The requests for rehearing of the Commission's Statement of Policy of December 17, 1992, are denied, and clarification is granted to the extent described in this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25173 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[12] 61 FERC ¶61,330, 62,203 (1993) (emphasis added; footnote omitted).

[Docket No. RP93-62-000]

Equitrans, Inc.; Informal Settlement Conference

October 8, 1993.

Take notice that an informal conference will be convened in this proceeding on Wednesday, October 20, 1993, immediately following the Prehearing Conference scheduled for 10 a.m. that morning in Docket Nos. RP93-187-000, *et al.*, for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208-0783 or Arnold H. Meltz at (202) 208-2161.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25289 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-744-000]

Northern Natural Gas Co.; Request Under Blanket Authorization

October 8, 1993.

Take notice that on September 28, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-744-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate one new delivery point and to construct and operate upgraded facilities for 7 existing delivery points for service to Wisconsin Gas Company (WGC), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to add one delivery point and upgrade facilities at seven others to accommodate the delivery to WGC of an additional 4,536 Mcf of natural gas on a peak day and 376,700 Mcf on an annual basis. It is asserted that total proposed deliveries for the 8 delivery points would be 17,030 Mcf on a peak day and 2,750,200 Mcf on an annual basis. It is stated that the deliveries would consist of gas volumes transported for WGC on a firm basis. It is asserted that Northern would construct under blanket certificate authorization approximately .25 mile of 12-inch pipeline and interconnecting facilities in Wisconsin. It is estimated that the cost of construction would be $322,000. Northern states that the proposed construction is required to accommodate expansion of its distribution system into new areas as a result of general market growth.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25290 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

October 8, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, November 10, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and received intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25291 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-552-000]

Southern California Edison Co.; Filing

October 8, 1993.

Take notice that on September 16, 1993, Southern California Edison Company submitted supplemental information regarding its filing in this docket.

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 18 CFR 385.214). All such motions or protests should be filed on or before October 21, 1993. 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. 93-25292 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-13-000]

Texas Gas Transmission Corp.; Application

October 8, 1993.

Take notice that on October 8, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94-13-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon certain facilities by sale to two of its existing customers, and abandon certain farm tap services to a third existing customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the application concerns a portion of the firm sales service currently being provided by Texas Gas to Mississippi Valley Gas Company (MVG) and Texas Gas' current firm sales service to the City of Scottsville, Kentucky (Scottsville). Texas Gas states that the above-described service is accomplished by Texas Gas purchasing gas from Tennessee Gas Pipeline Company (Tennessee) and redelivering such gas for sale to MVG and Scottsville. Texas Gas explains that, as part of both Tennessee and Texas Gas Order No. 636 restructuring proceedings, the parties have agreed upon an arrangement whereby Scottsville and MVG would cease November 1, 1993, to be serviced by Texas Gas at the subject locations, and instead receive gas service directly from Tennessee. Texas Gas states that the changes in service described above are all authorized by the regulations promulgated by the Commission in Order No. 636. It is also indicated, however, that in order for such service arrangement to be physically accomplished, both MVG and Scottsville must purchase the facilities owned by Texas Gas at the subject locations, which stand between those customers' facilities and the facilities of Tennessee. Texas Gas states that those facilities, in the case of MVG, consist of the Hardy Springs and Greenwood delivery stations, located in Grenada and LeFlore County, Mississippi, respectively, and, in the case of Scottsville, consist of the Halifax purchase station, the 6.8 miles of pipeline known as the Scottsville 4" pipeline (Scottsville 4") (along with the appurtenant farm taps) and the Scottsville sales meter station, all located in Allen County, Kentucky.

Texas Gas is seeking approval to abandon by sale to MVG and Scottsville the above-described facilities necessary for those parties to receive gas directly from Tennessee. Texas Gas is also requesting authority to abandon "farm tap" service to Western Kentucky Gas Company (Western) at those locations along the Scottsville 4" where such service is currently being rendered. It is indicated that those customers of Western will be serviced by Scottsville upon transfer of the pipeline to Scottsville. Texas Gas requests that the abandonment authority for both facilities and service be granted effective November 1, 1993, to correspond with the effective date of the subject assignments and reductions of service on Texas Gas and Tennessee for which pregranted authority exists under Order No. 636.

Texas Gas states that because of the changes being effectuated pursuant to Order No. 636, the rendering of direct service by Tennessee, as described, to MVG and Scottsville is the most efficient and economic way for these parties to receive natural gas service at the subject locations. It is stated that, with regard to the abandonment of farm tap service to Western along the Scottsville 4", Western gas agreed to sell the residential meters and service to Scottsville and Scottsville has agreed to provide continuing service to those residential customers served through those meters once Texas Gas transfers the Scottsville 4" pipeline to Scottsville.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of

the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25371 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-750-000]

Western Resources, Inc. and Southern Union Co.; Application

October 8, 1993.

Take notice that on September 30, 1993, Western Resources, Inc. (WRI), 818 Kansas Avenue, Topeka, Kansas 66601, and Southern Union Gas Company (Southern Union), 504 Lavaca, Suite 800, Austin, Texas 78701, hereinafter referred to jointly as Applicants, filed jointly in Docket No. CP93-750-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization for Southern Union to acquire all but one portion of WRI's local distribution system and gas transmission system, located within Missouri, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants request authorization for WRI to sell its Western Missouri properties to Southern Union and to transport gas in interstate commerce on a no-fee exchange basis with each other. Applicants request authorization to partially vacate WRI's 7(f) certificate, issued by the Commission in Docket No. CP89-485-000, authorizing WRI's service area determination, to reflect the sale of the western Missouri properties to Southern Union. Applicants also request that Southern Union be authorized to transport gas to serve WRI's former customers in western Missouri. It is stated that WRI will continue to own and operate facilities and serve customers in eastern Missouri, Kansas and Oklahoma. Applicants request that the Commission waive its filing requirements under part 154 of the Commission's Regulations and find that the non-jurisdictional status of WRI's and Southern Union's facilities and operations remains unaffected. It is asserted that no disruption of service would result as a result of the sale of facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WRI or Southern Union to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25293 Filed 10-14-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Continuation of Solicitation for Financial Assistance Program, No. 94-01

AGENCY: Department of Energy (DOE).

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy hereby announces its continuing interest in receiving applications for cooperative agreements and grants supporting work in the following program offices; Basic Energy Sciences, Biological and Environmental Research, Fusion Energy, Scientific Computing, Field Operations Management, Superconducting Super Collider, University and Science Education Programs, High Energy and Nuclear Physics, and Program Analysis activities. On September 3, 1992, DOE published in the **Federal Register** (57 FR 40582) a solicitation for this program which contained information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures which are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this notice of availability, but, in all cases, must be received by DOE on or before October 31, 1994.

ADDRESSES: Applicants may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20585 (301) 903-5212. Completed applications must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitation for the Office of Energy Research Financial Assistance Program was published in the **Federal Register**. This solicitation specifies the policies and procedures which govern the application, evaluation, and selection processes for grants and cooperative agreements. It is anticipated that approximately $500 million will be available for award in FY 1994. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93-25347 Filed 10-14-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of August 30 Through September 3, 1993

During the week of August 30 through September 3, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department

of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

L.K. Seymour, 8/31/93, LFA-0285

L.K. Seymour filed an Appeal from a determination issued by the Director of Personnel (Denying Official) of the Department of Energy in response to a request that Mr. Seymour submitted under the Freedom of Information Act (FOIA) and Privacy Act. In that determination, the Denying Official released responsive documents and responded that other documents which might have been responsive to his FOIA/Privacy Act request had been destroyed. The DOE found that the Director of Personnel had conducted a search reasonably calculated to uncover the material that Mr. Seymour requested and that no other responsive information existed. Therefore, Mr. Seymour's Appeal was denied.

Refund Applications

Daley Corporation, 9/3/93, RF272-25971, RD272-25971

The DOE issued a Decision and Order granting an Application for Refund filed by Daley Corporation, a highway and bridge construction company, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the road construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $26,605.

Enron Corp./ Waterloo Service Company, 9/3/93, RF340-188

The DOE issued a Decision and Order concerning a refund application that Waterloo Service Company (WSC) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that WSC is an agricultural cooperative operating for the benefit of its common shareholder/patrons. WSC previously received a refund of $778,632 for volumes of Enron propane that it resold to its member customers, and had requested an additional refund amount for volumes resold to non-member customers. The DOE found that since WSC had been required to pass through on a dollar for dollar basis the refund arising from product sold to its members, WSC had not directly benefitted from the end-user presumption of injury that served as the basis for granting that refund. The DOE therefore determined that it was appropriate to permit WSC to use the medium range reseller presumption of injury with respect to its sales of product to non-members. Accordingly, the DOE granted WSC an additional refund of $23,417 based on its total purchases from Enron that were resold to non-member-customers.

Texaco Inc./Barry Connell Colonial Truck Stop, 8/31/93, RF321-16208 RF321-19842

The DOE issued a Decision and Order modifying a refund that had been granted to Richard Sporck and his representative, Wilson, Keller & Associates, on behalf of Colonial Texaco. In the course of investigating a possible conflict between Mr. Sporck's application and one filed by Barry Connell, the OHA found that the Texaco-generated printout documenting purchases of 3,737,436 gallons submitted by Mr. Sporck in support of his application was for Mr. Connell's outlet. Mr. Sporck was able to document Texaco purchases by Colonial of 2,434,271 gallons from an indirect supplier. Therefore, the DOE directed Mr. Sporck and Wilson, Keller & Associates to remit $1,959, the excess portion of Colonial's refund, plus additional interest. Mr. Connell was granted a refund of $5,618 ($4,111 principal plus $1,507 interest).

Texaco Inc./Campbell's Run Texaco, McIntyre & Snyder Texaco, Campbell's Run Texaco, 9/2/93, RF321-38, RF321-19781, RF321-19782

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by Charles McIntyre and Earl Snyder who were partners in two Texaco retail outlets. The DOE found that because of this common ownership, both outlets should be considered together in determining the appropriate presumption level. Under the medium-range presumption of injury, the total principal refund for both stations was $10,000, to be divided equally between the two partners. Mr. McIntyre was accordingly granted a refund of $5,000 plus interest, and Mr. Snyder, who had already received a principal refund of $3,090 with respect to one of the stations, was granted an additional refund or $1,910, plus interest.

Texaco Inc./Hall's Texaco, 8/31/93, RF321-5656

The DOE issued a Decision and Order denying an Application for Refund filed by James L. Hall in the Texaco Inc. Subpart V special refund proceeding on behalf of Hall's Texaco. It was determined that Mr. Hall was a consignee for a Texaco branded jobber, Lee Oil Company. As a consignee for Lee Oil Company, Mr. Hall was paid a fixed per gallon commission amount for any Texaco product he sold at his retail station and he did not actually purchase the product from Lee Oil Company. Because Mr. Hall was not a customer or consignee of Texaco, but instead a consignee of Lee Oil Company, the DOE determined that he could not have been affected by Texaco's alleged overcharges. Accordingly, Mr. Hall's Application for Refund on behalf of Hall's Texaco was denied.

Texaco Inc./Hicone Texaco, 9/3/93, RF321-18938

The DOE issued a Decision and Order denying an Application for Refund filed by Robert Robinson in the Texaco Inc. Subpart V special refund proceeding on behalf of Hicone Texaco. It was determined that Mr. Robinson was a consignee for a Texaco branded jobber, Lee Oil Company. As a consignee for Lee Oil Company, Mr. Robinson was paid a fixed per gallon commission amount for any Texaco product he sold at his retail station and he did not actually purchase the product from Lee Oil Company. Because Mr. Robinson was not a customer or consignee of Texaco, but instead a consignee of Lee Oil Company, the DOE determined that he could not have been affected by Texaco's alleged overcharges. Accordingly, Mr. Robinson's Application for Refund on behalf of Hicone Texaco was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ Hummel Oil Company et al	RF304–13683	08/31/93
Atlantic Richfield Company/ National Car Rental et al	RF304–13156	09/01/93
Enron Corp./Wynn-Fowler Energy Associates, Inc	RF340–84	09/02/93
Gulf Oil Corporation/Econ–O–Gas, Inc	RF300–21752	09/03/93
Gulf Oil Corporation/RI-Bon, Inc	RF300–12774	09/01/93
Gulf Oil Corporation/Salem Oil & Grease Co. et al	RF300–21153	09/01/93
Gulf Oil Corporation/Suffolk County Treasury	RF300–15661	09/03/93
Shell Oil Company/Luverne Farm Store Gas Co., Inc	RF315–329	09/02/93
Texaco Inc./Beidler's Texaco et al	RF321–800	08/31/93
Texaco Inc./Bernard and Bernice Child et al	RF321–5807	08/31/93
Texaco Inc./Kinard's Texaco	RF321–19872	09/03/93
Texaco Inc./Tulsa Truck Rental et al	RF321–1798	08/31/93
Township of Pequannock et al	RF272–89072	09/03/93
Williams Brothers Construction Inc	RF272–76246	09/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
6th St. Gulf	RF300–19623
Advance Cast Stone Company.	RF272–91591
Bachman's, Inc	RF272–91511
Baker Greenhouses	RF272–90790
Bell Helicopter Textron, Inc	RF272–91977
Blair Academy	RF272–90180
Borough of Clayton	RF272–88300
C & M Mini Mart	RF321–17081
City of Brazil	RF272–88316
City of Corbin	RF272–88311
City of Grover	RF272–88367
City of Keene	RF272–88363
City of Kellogg	RF272–88364
City of Leawood	RF272–88351
City of Leesville	RF272–88340
City of Litchfield	RF272–88345
City of Wyandotte	RF272–90820
Commonwealth of Kentucky	RF272–92315
Dillon Elementary #10	RF272–87166
Dorton's Texaco	RF321–17008
Dunkirk Ice Cream Co., Inc	RF272–92460
E and S Trucking Co	RF272–91612
Eby Construction	RF272–90865
Elk Lp Gas Co., Inc	RF321–17422
Fairbanks Municipal Utilities System.	RF272–92202
Hillsborough Shell	RF315–9708
Hofmann Industries, Inc	RF272–92314
Homestead Baking Co	RF272–94758
Hudson Transit Lines, Inc	RF272–92334
Isabel School District 20–2	RF272–83504
La Canada Unified	RF272–79596
Little Eagle Day School	RF272–83568
Madison Gas & Electric Co	RF272–92462
Maola Milk & Ice Cream Co	RF272–90854
Marvin Lumber & Cedar Co	RF272–92343
Mike's Shell North	RF315–9709
Mohawk Paper Mills, Inc	RF272–94049
Old National Gulf	RF300–14935
Partie/McPherson, Inc. #1	RF321–17003
Polo School District 29–2	RF272–83572
Spencer School District	RF272–83474
State of Maryland Department of General Services.	RF321–12610
T.J.'s Minimart	RF300–13551
Tee's Lakeshore Texaco	RF321–11015
The Arrowhead High School	RF272–83586
Town of Kearny	RF272–88362
Village of Canastota	RF272–88333
Walton-Verona Board of Education.	RF272–79470

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: October 7, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–25349 Filed 10–14–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4704–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 27, 1993 through October 1, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–BLM–K65200–NV Rating EC2, Tonopah Resource Area, Resource Management Plan, Implementation, Battle Mountain District, Nye and Esmeralda Counties, NV.

Summary

EPA expressed environmental concerns due to potential impacts to surface water quality the need for additional information in the FEIS on best management practices and water quality monitoring. Bureau of Land Management should consult with the State of Nevada's Division of Environmental Protection in order to ensure the protection of water quality and beneficial uses.

ERP No. D–NIH–D81022–MD Rating LO1, William H. Natcher Building, Phase II Construction and

Consolidation, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD.

Summary

EPA had no objections to the preferred alternative.

ERP No. DS-AFS-L65155-00 Rating EC2, Northern Spotted Owl Management Plan, Updated Information concerning Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, OR, WA and CA.

Summary

EPA supported the basic features in the preferred alternative but had environmental concerns regarding implementation of future activities. EPA requested additional information and clarification about: the criteria and process for adjusting riparian reserves; the minimum physical, chemical, and biological monitoring needed for implementation; a framework for incorporating non-federal lands into the implementation plan; a summary of major tasks, agency/group roles, budget, and timeliness for implementation; and air quality effects from prescribed burning.

Final EISs

ERP No. F-AFS-F65019-MN Superior National Forest Land and Resource Management Plan, Adoption of Boundary Waters Canoe Area (BWCA) Wilderness Management Plan, Implementation, Cook, Lake and St. Louis Counties, MN.

Summary

EPA had no objections to the preferred alternative.

ERP No. F-AFS-L40181-ID Salmon River Road Improvement Project, Development Road No. 30 from North Fork to Corn Creek, Salmon National Forest, North Fork Ranger District, Custer and Lemhi Counties, ID.

Summary

EPA had no objections to the preferred alternative as it is described in the final EIS.

ERP No. F-AFS-L65191-OR Santiam Pass Demo Project, Harvesting Timber and Road Construction, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary

EPA expressed environmental concerns about potential water quality impacts and requested additional information on how the unified forest plan relates to the proposed Santiam Pass Demo project.

ERP No. F-COE-K36098-CA Prado Dam Water Conservation Plan Implementation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA.

Summary

Review of the Final EIS was not deemed necessary.

ERP No. F-FRC-E03005-00 Florida Gas Transmission Phase III Expansion Project, Construction and Operation, Special Use Permits, Section 10 and 404 Permits and NPDES Permit, extending through FL, AL, MS and LA.

Summary

EPA had two principal areas of concern. The first was about the failure of the Federal Energy Regulatory Commission (FERC) to translate general staff recommendations into specific commitments or license conditions in the final FEIS. The second was about FERC's plans to hire environmental inspectors to oversee project monitoring rather than to monitor the work directly.

ERP No. FS-BLM-K65062-NV Egan Resource Management Plan (RMP), Oil and Gas Leasing Amendment, Updated Information, Implementation, Ely District, White Pine, Lincoln, and Nye Counties, NV.

Summary

Review of the Final Supplemental EIS was not deemed necessary.

ERP No. FS-DOE-K03007-CA Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 Continued Operation, Updated Information, Elk Hills, Kern County, CA.

Summary

EPA expressed environmental concerns remained unresolved in the FSEIS and recommended that the DOE's Record of Decision contain appropriate commitments to resolve these issues. Unresolved issues included the need for: An updated Biological Opinion from US Fish and Wildlife Service; analysis of the effects of oil-field chemicals on wildlife, protection of drinking water supplies, and the potential need for a Clean Air Act conformity determination.

Dated: October 12, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-25389 Filed 10-14-93; 8:45 am]

BILLING CODE 5560-50-U

[ER-FRL-4704-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed October 04, 1993 Through October 08, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930348, DRAFT EIS, COE, IL, WI, IL, Fox River and Chain O'Lakes Area Recreational Boating Project, Special Area Management Plan, Implementation, Section 10 and 404 Permits, Algonquin Dam, Lake and McHenry Counties, IL and WI, Due: November 29, 1993, Contact: Barbara Williams (312) 353-6464.

EIS No. 930349, FINAL EIS, AFS, CO, Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO, Due: November 15, 1993, Contact: Wendy Schmitzer (303) 879-1722.

EIS No. 930350, FINAL EIS, AFS, AK, North Revilla Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: November 15, 1993, Contact: Dave Arrasmith (907) 225-3101.

EIS No. 930351, DRAFT EIS, AFS, CA, Paper Reforestation and Resource Recovery Project, Implementation, Stanislaus National Forest, Mi-Wok Ranger District, Tuolumne County, CA, Due: November 29, 1993, Contact: Ann L. Denton (209) 586-3234.

EIS No. 930352, FINAL SUPPLEMENT, NOA, Reef Fish Fishery of the Gulf of Mexico, Fishery Management Plan, Amendment 5, Updated Information concerning Permit Approvals and Special Management Zones Establishment, Implementation, FL, AL, MS, LA, TX and Gulf of Mexico, Due: November 15, 1993, Contact: Nancy Foster (301) 713-2239.

EIS No. 930353, DRAFT EIS, AFS, ID, Black Pine Gold Mine Expansion Project, Implementation, Plan of Operation and Right-of-Way Permits, Sawtooth National Forest, Burley Ranger District, Cassia County, ID, Due: November 29, 1993, Contact: Pete Peterson (208) 678-0430.

EIS No. 930354, DRAFT EIS, USN, NC, Camp Lejeune Marine Corps Base, Disposal of Non-Hazardous Solid Waste Project, Implementation, COE Section 404 and NPDES Permits, Onslow County, NC, Due: November 29, 1993, Contact: Jim Omans (703) 696-0866.

EIS No. 930355, DRAFT EIS, FHW, PA, US 222 Corridor Design Location Study, Improvements, from Breingsville to the I–78 Interchange, Funding, Lower and Upper Macungie Township, Lehigh County, PA, Due: December 03, 1993, Contact: Manuel A. Marks (717) 782–4422.

EIS No. 930356, DRAFT SUPPLEMENT, EPA, AL, TX, LA, MS, ADOPTION—1993 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 142 and No. 143 Issuance of General New Source NPDES Permit, Lease Offerings and Offshore, AL, LA, TX and MS, Due: November 29, 1993, Contact: Norm Thomas (214) 655–2260.

The U.S. Environmental Protection Agency has adopted the US Department of the Interior, Minerals Management Service's, final EIS filed with U.S. Environmental Protection Agency on 10–30–92. EPA was a Cooperating Agency on the DOI's EIS.

EIS No. 930357, DRAFT EIS, FRA, CT, MA, Northeast Corridor Improvement Project, Implementation, Electrification of the Railline from New Haven to Boston, Funding, COE Section 10 and 404 Permits, New Haven, CT and Boston, MA, Due: November 29, 1993, Contact: Mark Yachmetz (202) 366–6593.

EIS No. 930358, FINAL EIS, FHW, CO, CO–82 Transportation Improvements, East of Basalt to the Buttermilk Ski Area West of Aspen, Funding and COE Section 404 Permit, Pitkin County, CO, Due: November 15, 1993, Contact: George Osborne (303) 969–6730.

EIS No. 930359, FINAL EIS, COE, NH, Nashua-Hudson Circumferential Highway Improvements, Approval and COE Section 10 and 404 Permits, Towns of Hudson, Nashua and Litchfield, Hillsborough County, NH, Due: November 15, 1993, Contact: Theresa Flieger (617) 647–8336.

Amended Notices

EIS No. 930286, DRAFT EIS, FHW, PA, WV, Mon/Fayette Transportation Improvement Project, I–68 in Monongalia Co., WV to PA–6119 (Formerly the Chadville Demonstration Project), Funding and COE Section 404 Permit, Monongalia County, WV and Fayette County, PA, Due: October 01, 1993, Contact: Daniel W. Johnson (717) 782–2276.

Published FR 08–20–93—Review period extended.

EIS No. 930313, FINAL EIS, COE, OH, Cleveland Harbor Dike 14 Confined Disposal Facility (CDF) for Dredged Material, Modifications Cuyahoga County, OH , Due: October 18, 1993, Contact: Timothy Daly (716) 879–4171.

Published 9–17–93—Titled Correction.

Dated: October 12, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–25388 Filed 10–14–93; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

Neptune Orient Lines, Ltd., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011431.

Title: Neptune Orient Lines, Ltd. and Nippon Yusen Kaisha Space Charter and Sailing Agreement in the Far East, South East Asia, Australasia, South West Asia and Mid-East-U.S. Atlantic Coast Trades.

Parties:

Neptune Orient Lines, Ltd.

Nippon Yusen Kaisha

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels and to rationalize service in the trade between ports in the Far East, South East Asia, Australasia, South West Asia and the Middle East on the one hand and ports on the U.S. Atlantic Coast on the other hand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 12, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25370 Filed 10–14–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

W–C Ventures, Inc., dba Worldwide Cargo Specialties, 1562 E. Rothmoor Circle, Salt Lake City, UT 84121, Officers: Patty Williams, President; Ron Williams, Director; Derek Williams, Director

R S R Shipping Co., Inc., 451 North Long Beach Road, Rockville Centre, NY 11570, Officer: Robert Rullo, President

Marco Forwarding International Co., 5750 N.W. 32nd Court, Miami, FL 33142, Officer: Ana Maria Samitier, President/Director

Navigo International, Inc., 3103 McKinney, Houston, TX 77003, Officers: Allen William White, President; Verona Sandra McFadden, Vice President

1959 Enterprise Inc., 7620 Marbach Road, San Antonio, TX 78227, Officers: Hani Shalabi, President; Mohamed Shalabi, President; Margaret Shalabi, Vice President

Traders of Miami, 4710 N.W. 170th Street, Carol City, FL 33055, Officer: Lissette Canela

M & M Shipping, 8058 W. 95th Street, #3E, Hickory Hills, IL 60457; Mohammad R. Sayyed, Sole Proprietor

Transglobe Express, Inc., The Hartford Center, 729 Route 83, Suite 305, Bensenville, IL 60106, Officer: Jung-Keun Oh, President/Secretary/Treasurer/Stockholder

S.J. Stile Associates, Ltd., 153–66 Rockaway Blvd., 2nd Floor, Jamaica, NY 11434, Salvatore J. Stile, President/Director/Treas./Stockh.; Milton B. Heid, Vice President/Director/Secre./Stockh.

Dated: October 12, 1993.

By the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–25326 Filed 10–14–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Central Bancshares of the South, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central Bancshares of the South, Inc., Birmingham, Alabama; to acquire 1st Performance Interim, FSB, Jacksonville, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25317 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

Citizens Union Bancorp of Shelbyville, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 8, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky; to acquire 100 percent of the voting shares of First Farmers Bank and Trust Company, Owenton, Kentucky.

2. NBC Capital Corporation, Starkville, Mississippi; to acquire 100 percent of the voting shares of Charter Holding Company, Inc., Tuscaloosa, Alabama, and thereby indirectly acquire First State Bank of Tuscaloosa, Tuscaloosa, Alabama.

3. Sparkman Bancshares, Inc., Sparkman, Arkansas; to become a bank holding company by acquiring at least 82.6 percent of the voting shares of Merchants and Planters Bank, Sparkman, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lake Elmo Profit Sharing Plan and the Lake Elmo Profit Sharing Trust, Lake Elmo, Minnesota; to acquire an additional 1.89 percent of the voting shares of Lake Elmo Bancorp, Inc., Lake Elmo, Minnesota, for a total of 49.2 percent, and thereby indirectly acquire Lake Elmo Bank, Lake Elmo, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sentinel Bancorporation, Omak, Washington; to acquire 100 percent of the voting shares of First Bank Washington, Omak, Washington.

Board of Governors of the Federal Reserve System, October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25318 Filed 10-14-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA.

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to enable the agency to assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors. A revised system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revision. Comments must be received on or before the 30th day following publication of this notice. (November 15, 1993). The system will become effective without further notice on the 30th day following publication of this notice (November 15, 1993), unless comments are received that would result in a contrary decision.

ADDRESSES: Address comments to the General Services Administration (CAIR) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

Background

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to implement the Cash Management Improvement Act Amendments of 1992, Pub. L. 102–589 and title 26 Code of Federal Regulations, § 301.6402–6 *et seq.* The revision will enable the agency

to assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

GSA/PPFM-7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following General Services Administration, Office of Finance and Office of General Counsel, Central Office and regional office addresses:

GS Building, 18th and F Streets NW., Washington, DC 20405.
John W. McCormack Post Office and Courthouse, Boston, MA 02109.
Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10007.
Wannamaker Building, 100 Market Square East, Philadelphia, PA 19107.
401 West Peachtree Street, Atlanta, GA 30365-2550.
John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.
General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.
Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.
Denver Federal Center Complex, Building 41, Denver, CO 80225.
General Services Administration, 525 Market Street, San Francisco, CA 94105.
GSA Center, Auburn, WA 98002.
GSA Regional Office Building, Seventh and D Streets SW., Washington, DC 20407.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include employees and former employees and other individuals who are indebted to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Types of personal data in the system may take the form of commercial reports, agency investigative reports showing the debtor's assets and liabilities and his or her income and expenses, the individual debtor's assets and liabilities and income and expenses, and other information such as social security number and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 80 Stat. 309, 31 U.S.C. 952; Debt Collection Act of 1982, Pub. L. 97-365; and title 4 Code of Federal Regulations, chapter II, part 105, Cash Management Improvement Act Amendments of 1992, Pub. L. 102-589 and Title 26 Code of Federal Regulations, § 301.6402-6 *et. seq.*

PURPOSE(S):

To assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. When debtors fail to make payment through normal collection routines, credit data is analyzed to determine the feasibility of enforced collection by referring the cases to the Department of Justice for litigation. Credit data becomes an integral part of claim files forwarded to the General Accounting Office and/or the Department of Justice as prescribed in the Joint Federal Claims Collections Standard (4 CFR ch II).

b. Records may be disclosed to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

c. Records may be disclosed to other Federal agencies where an applicant for employment or a current employee of the agency is delinquent in repaying his/her Federal financial obligation. The purpose of this disclosure is to enlist the agency's cooperation in facilitating repayment.

d. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, a routine use, to the appropriate agency, such as the General Accounting Office, the Office of Management and Budget, the Department of Justice, and state agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing by statute, or rule, regulation, or order issued pursuant thereto.

e. A record from this system of records may be disclosed to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. Records may be disclosed to a debt collection agency, that GSA has contracted for collection services, to recover indebtedness owed to the United States.

g. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

h. Information contained in the system of records may also be disclosed to the Internal Revenue Service for the purpose of offsetting a Federal claim against a taxpayer's income tax refund.

DISCLOSURE TO CONSUMER REPORTING AGENCIES.

Disclosures pursuant to 5 U.S.C. 552a(b)(12)

Disclosures may be made from this system to "Consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1861a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(A)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in metal cabinets and in electronic form in computers.

RETRIEVABILITY:

Credit data is maintained by debtor name and claim number, cross referenced to social security number (when available) to verify name and address.

SAFEGUARDS:

When not in use by personnel responsible for the collection of claims, records are stored in lockable filing cabinets. Personal computer files are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records are a part of the GAO site auditing collection files and are cut off at the end of the fiscal year, held 1 year, and then retired under Record Group 217 (GAO). Records created prior to July 2, 1975, will be retained by GAO for 10 years and 3 months after the period of the account. Records created on or after July 2, 1975, will be retained by GAO for 6 years and 3 months after the period of the account.

SYSTEM MANAGER AND ADDRESS:

Chief, Receivables and Collection Management Branch, Financial Control

Division, Office of Chief Financial Officer, 18th and F Streets NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals regarding claims pertaining to themselves should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include name and address.

CONTESTING RECORDS PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 104.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from commercial credit reports, agency investigative reports, individual debtors' own financial statements, and from other GSA systems of records.

Dated: October 1, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-25384 Filed 10-14-93; 8:45 am]

BILLING CODE 6820-34

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Application for Waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program—0990-0001—Extension—The application is used by institutions (colleges, hospitals, etc.) to request a favorable recommendation to the USIA for waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program on behalf of foreign visitors working in areas of interest to HHS.

Respondents: Individuals, State or local governments, Businesses or other for-profit, non-profit institutions;
Total Number of Respondents: 200;
Frequency of Response: one time;
Average Burden per Response: 6 hours;
Estimated Annual Burden: 1200 hours.

2. Applicant Background Survey—This form will be used to ask applicants for employment how they learned about a vacancy, to make sure that recruitment sources yield qualified women, minority and handicapped applicants in compliance with EEOC Management Directive 714.

Respondents: Individuals;
Annual Number of Respondents: 310,000;
Annual Frequency of Response: one time;
Average Burden per Response: 2 minutes;
Total Annual Burden: 10,333 hours.
OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 30, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93-24874 Filed 10-14-93; 8:45 am]

BILLING CODE 4150-04-M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting at the Department of Health and Human Services, Room 703-A Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20301, from 9:30 a.m., October 26, 1993, through 4 p.m., October 27, 1993.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401-9215.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, Room 303-D, Humphrey Building, Washington, DC 20201, (202) 690-8178.

SUPPLEMENTARY INFORMATION: During this meeting, the Advisory Board will: meet with the press and interest groups regarding the 1993 report; review the report highlights; discuss possible strategies for achieving implementation of the 1993 report; and discuss the process for developing the 1994 report.

Dated: October 9, 1993.

Preston Bruce,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 93-25361 Filed 10-14-93; 8:45 am]

BILLING CODE 4184-01-P

Food and Drug Administration

[Docket No. 93F-0331]

Hoechst Aktiengesellschaft; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Aktiengesellschaft has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

DATES: Written comments on the petitioner's environmental assessment by November 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4397) has been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the

agency is placing the environmental assessment submitted with the petition that is the subject of the notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 15, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 29, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-25320 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93F-0335]

Sequa Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers for binders used in clay coatings for paper and paperboard intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by November 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0002, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4386) has been filed by Sequa Chemicals, Inc., One Sequa Dr., Chester, SC 29706-0070. The petition proposes to amend the food additive regulations to provide for the safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers for binders used in clay coatings for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 15 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 7, 1993.

Fred R. Shank,

Center for Food Safety and Applied Nutrition.

[FR Doc. 93-25321 Filed 10-14-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1993:

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: December 1-2, 1993; 9 a.m.-5 p.m.

Place: Parklawn Building, Conference Rooms O, P, & Q, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The first day of the meeting, December 1, will consist of simultaneous meetings of two of the Commission's Working Subcommittees. The full Commission will meet commencing at 9 a.m on Wednesday, December 1 until 2:45 p.m., and from 9 a.m. to 5 p.m. on Thursday, December 2. Agenda items will include, but not be limited to further discussion of the report of the IOM's Section 313 Vaccine Safety Committee, including possible recommendations for changes in the Vaccine Injury Table and Qualifications and Aids to Interpretation; routine Program reports; reports from the National Vaccine Program; reports from the ACCV Subcommittees, and; discussion of vaccine excise tax policy.

* * * * *

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines

Time: December 1, 1993, 3 p.m.-5 p.m.

Place: Conference Room Q, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee reviews quarterly, with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of

funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund.

If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full Commission and, if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss and review the status of funding and spending on pre-1988 awards and the status of the Trust Fund.

* * * * *

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines

Time: December 1, 1993, 3 p.m.–5 p.m.

Place: Conference Room O & P, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open for entire meeting.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Court of Federal Claims, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Subcommittee will continue its review of the findings of the report of the Institute of Medicine's Section 313 Study Committee.

Public comment will be permitted at the respective Subcommittee meetings on December 1 before they adjourn in the evening; before noon and at the end of the full Commission meeting on December 1; and also before noon and before they adjourn on the second day on December 2. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew B. Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 702, 6001 Montrose Road, Rockville, MD 20852; Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room O, P, & Q before 10 a.m. on December 1 and 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, 6001 Montrose Road, Room 702, Rockville, Maryland 20852; Telephone (301) 443–6593.

* * * * *

Name: National Advisory Council on Nurse Education and Practice

Date and Time: December 9–10, 1993, 8:30 a.m.

Place: Conference Room 503A, The Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

The meeting is open to the public.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (P.L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The meeting will cover reports on the Health Resources and Services Administration, the Bureau of Health Professions, Division of Nursing and a discussion of Workforce Projections. The Secretary, Health and Human Services, and the Surgeon General have been invited to address the Council.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Dated: October 8, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–25269 Filed 10–14–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Cancellation of Meetings

Notice is hereby given of the cancellation of meetings of two National Institute of Mental Health committees which were published in the **Federal Register** on September 7, (58 FR 47152): the Services Research Review Committee, October 13–15, 1993, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland and the Extramural Science Advisory Board, October 25–26, 1993, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meetings were cancelled due to prior commitments of several members.

Dated: October 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25323 Filed 10–14–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on November 15, 1993. The meeting will take place from 10 a.m. to 12 noon in Conference room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: October 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–25324 Filed 10–14–93; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: September 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, City, State	Effective date
Program-related convictions:	
Ancor Medical Services Inc	10/12/93
Columbus, OH	
Arkoncel, Maria Lourdes	10/10/93
Cerritos, CA	
Cordle-Boggs, Jacqueline A	10/12/93
Centerburg, OH	
Crawford, James G	10/12/93
St. Thomas, VI	
Drescher, Edward M	10/03/93
Fairfield, CT	
Dyke, Edwin C	10/12/93
Detroit, MI	
Fine, Harvey M	10/10/93
Stockton, CA	
Health Center Pharmacy, Inc	09/29/93
Newport, NH	
Jung, Jeannette L	10/03/93
Burnt Hills, NY	
Jung, Elmer F	10/03/93
Burnt Hills, NY	
Kirkpatrick, Theodore P	10/10/93
Santa Monica, CA	
Kumar, Sudhir	09/29/93
Flossmoor, IL	
Lamson, Lavonne M	10/03/93
Lewiston, ME	
Nevrekar, Lila V	10/11/93
Shawnee, OK	
O'Brien, Judith A	09/29/93
Lapeer, MI	
Weinstein, Paul D	10/03/93
North Andover, MA	
Patient abuse/neglect convictions:	
Barrett, David A	09/02/93
Clear Lake, IA	
Benavidez, Arnoldo	10/11/93
Brownsville, TX	
Brown, Ramona	10/11/93
Seguin, TX	
Brownlee, Wyzetta	09/30/93
Tuscaloosa, AL	
Cheatham, Shannon	10/11/93
Clinton, LA	
Climaco, Jesus L	10/11/93
Rock Springs, WY	
Coe, William Donald Jr	10/11/93
Golden, CO	
Portillo, Lauro J	10/11/93
Mission, TX	
Roldan, Elijio	10/12/93
Grand Rapids, MI	
Thomas, Stacey Vincent	09/30/93
Birmingham, AL	
Wessman, Linda M	10/12/93
Norway, MI	
Conviction for health care fraud:	
Nettles, Georgina T	09/30/93
Hilliard, FL	
Default on PHS education loan:	
Ackley, Brainard Lee	10/09/93
Kitty Hawk, NC	
Alegria, Albert J	10/20/93
S Pasadena, CA	
Anderson, Sharon R	10/20/93
Santa Ana, CA	
Beatty, Brian J	10/21/93
Englewood, CO	
Beaver, Charlotte M Reynolds	10/21/93
Houston, TX	
Blase, Richard M	10/22/93
St. Louis, MO	
Broadus, Robert C	10/21/93
San Antonio, TX	
Brown, Michael L	10/22/93
Fort Pierce, FL	
Bullion, James F Jr	10/22/93
Longwood, FL	
Cross, Bruce W	10/22/93
Lithonia, GA	
Crosswhite, Larry K	10/22/93
Braselton, GA	
Curran, Douglas J	10/20/93
Fresno, CA	
D'Angelantonio, Julius M	10/13/93
Williamstown, NJ	
Dangerfield, Alan N	10/20/93
Santa Clara, CA	
Dean, J Coy	10/21/93
Dickinson, TX	
Edmunds, John D	10/13/93
Barnegat, NJ	
English, Thomas W	10/22/93
Green Bay, WI	
Evans, Catharine L	10/22/93
Columbus, OH	
Faison, Willie R	10/09/93
Louisville, KY	
Friedlander, Michael A	10/09/93
Dunwoody, GA	
Gross-Johnson, Bonnie J	10/09/93
Columbus, OH	
Gutierrez, Humberto	10/10/93
Hialeah, FL	
Hagopian, Laurie	10/13/93
Richmond, ME	
Hansen, Kathy M	10/22/93
Hanover Park, IL	
Hanson, William V Jr	10/09/93
Bellville, IL	
Henshaw, Clifford D	10/09/93
Sault Ste Marie, MI	
Herem, Larry A	10/20/93
Burley, ID	
Hornback, Gary	10/09/93
Edwardsville, IL	
House, Charles P	10/22/93
Ellenton, FL	
Johnson, Ervin	10/09/93
Grosse Pt. Farms, MI	
Johnson, Craig B	10/20/93
Salem, OR	
Kaiser-Coello, Karen K	10/22/93
Parkland, FL	
Knol-Vandenbil, Jennifer S	10/22/93
Kennesaw, GA	
Lamagdeliene, Michael K	10/20/93
Anchorage, AK	
Langolf, Daniel	10/21/93
Golden, CO	
Latimer, Harvey L	10/10/93
Nashville, TN	
Law, Daniel C	10/09/93
Milwaukee, WI	
Leclair, Leonard J	10/09/93
Standish, MI	
Lewis, Carol E	10/09/93
Cleveland Hgts, OH	
Lyon, Richard F	10/09/93
Urbana, MO	
Massengale, Lendell Jr	10/09/93
Cincinnati, OH	
Matanzo, Ramon D	10/13/93
Naguabo, PR	
Moore, David S	10/20/93
San Diego, CA	
Murphy, Michael F	10/13/93
Vestal, NY	
Noble, Craig J	10/09/93
Redford, MI	
Obester, David A	10/22/93
Columbus, OH	
Patterson, Farris	10/09/93
May Wood, IL	
Payne, Paul B	10/10/93
Antioch, TN	
Phyfer, Kathryn A	10/22/93
Perryville, MO	
Reed, Susan A	10/20/93
Flagstaff, AZ	
Robinette, Terry A	10/21/93
Sandy, UT	
Rudner, Todd W	10/13/93
Bayonne, NJ	
Rynders, Arie	10/20/93
Bakersfield, CA	
Schack, Richard N	10/13/93
Flushing, NY	
Sciaroni, Matthew H	10/20/93
Fresno, CA	
Silver, Mitchell	10/22/93
Deerfield Bch, FL	
Spears, Roseann	10/22/93
Kennesaw, GA	
Spencer, Durwood	10/20/93
Bakersfield, CA	
Steffens, Thomas E	10/20/93
Silverdale, WA	
Stoermer, Sandra C	10/20/93
Tacoma, WA	
Thomas, Audria B	10/13/93
St. Thomas, VI	
Thornton, Loren D	10/22/93
Fruitland Park, FL	
Tindall, Michael A	10/21/93
Magna, UT	
Turner, Nancy A	10/21/93

Subject, City, State	Effective date
Springville, UT	
Walker, Joseph C	10/09/93
Cleveland Hgts, OH	
Whitted, Glenn E	10/09/93
Amherst, OH	

* * * * *

Dated: October 6, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93-25356 Filed 10-14-93; 8:45 am]

BILLING CODE 4150-04-P

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, September 3, 1993.

(Call Reports Clearance Officer on (410) 965-4142 for copies of package)

1. SSA-Initiated Personal Earnings and Benefit Estimate Statement Public Opinion Questionnaire—0960-NEW. The information on form SSA-700 will be used by the Social Security Administration to obtain recipient reaction, opinion, and comprehension regarding a Personal Earnings and Benefit Estimate Statement (PEBES). The respondents will be selected recipients of PEBES who complete and return this questionnaire.

Number of Respondents: 5,000
Frequency of Response: 1
Average Burden Per Response: 12 minutes
Estimated Annual Burden: 1,000 hours

2. Student Reporting Form—0960-0088. The information on form SSA-1383 is used by the Social Security Administration to determine if a reported change will affect the benefits payable to the student who receives them. The respondents are full-time students who receive Social Security benefits.

Number of Respondents: 75,000
Frequency of Response: On occasion
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 7,500 hours

3. Reporting Changes That Affect Your Social Security Payment—0960-0073. The information on form SSA-1425 is used by the Social Security Administration to determine if a beneficiary should continue to be entitled to the same amount of benefits or if those benefits should be terminated or changed based on the report. The respondents are Social Security beneficiaries who use this form to report events which could affect the payment of their benefits.

Number of Respondents: 70,000
Frequency of Response: On occasion
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 5,833 hours

4. Application for Supplemental Security Income—0960-0229. The information on form SSA-8000 is used by the Social Security Administration to determine eligibility and the amount payable in claims for Supplemental Security Income (SSI). The respondents consist of applicants for SSI.

Number of Respondents: 1,855,000
Frequency of Response: 1
Average Burden Per Response: 34 minutes
Estimated Annual Burden: 1,015,167 hours

5. Focus Group Testing of SSA's Service Delivery and Engineering of the Disability Process—0960-NEW. The information obtained during these focus group discussions will be used by the Social Security Administration to help plan for improvements in the service delivery and disability areas by learning what the respondents expect. The respondents will be selected claimants or recipients and members of the general public.

Number of Respondents: 288
Frequency of Response: 1
Average Burden Per Response: 90 minutes
Estimated Annual Burden: 432 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 12, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93-25414 Filed 10-14-93; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-93-1037; FR-3544-D-01]

Delegation of Authority To Approve Refinancing of Bond-financed Section 8 Rental Housing Projects to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commission

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The Secretary of Housing and Urban Development is delegating responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Donald A. Kaplan, Director, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street SW, room 5136, Washington, DC 20410, (202) 401-0450 (voice) or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the power and authority of the Secretary of Housing and Urban Development to approve refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, including the authority to redelegate to other employees of the Department. The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may issue rules or regulations to carry out this responsibility and the Assistant Secretary for Housing—Federal Housing Commissioner may waive such rules or regulations to the extent authorized by statute or in the rules or regulations. The Assistant Secretary and General Deputy Assistant Secretary may not redelegate the authority to issue rules or regulations. The Assistant Secretary also

may not redelegate the authority to waive rules or regulations (See Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the **Federal Register** on April 22, 1991, at 56 FR 16337).

Section A. Delegation of Authority

The Secretary of Housing and Urban Development hereby delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the power and authority to approve refinancings of bond-financed Section 8 Rental Housing Projects under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This power and authority includes, but is not limited to, the authority to review and approve the financing terms such as the undertaking of any refunding of bonds which financed new construction or substantial rehabilitation of 100 percent assisted or partially assisted Section 8 rental housing and which involves assignment of the Housing Assistance Payments Contract as security for the refunding bonds. The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may issue rules or regulations to carry out this responsibility and the Assistant Secretary for Housing—Federal Housing Commissioner may waive such rules or regulations to the extent authorized by statues or in the rules or regulations.

Section B. Authority Excepted

The following authorities are excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner:

1. The authority to issue notes or obligations for purchase by the Secretary of the Treasury.
2. The authority to sue and be sued.

Section C. Authority Which May Not Be Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may not redelegate the authority to issue rulers or regulations. The Assistant Secretary may not redelegate the authority to waive rules or regulations (See Statement of Policy on Waiver of Regulations and Directives issued by HUD published in the **Federal Register** on April 22, 1991, at 56 FR 16337).

Authority: Section 8(e)(1) of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437f(e)(1); Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93-25359 Filed 10-14-93; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-53]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 15, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 8, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 93-25299 Filed 10-14-93; 8:45 am]

BILLING CODE 4210-29-F

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-93-3486; FR-3288-N-04]

NOFA for Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils: Announcement of Funding Awards

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the NOFA entitled Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director Preservation Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2300. The TDD number for the hearing impaired is (202) 708-9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of these grant funds is to facilitate acquisition of certain HUD-insured or -assisted multifamily projects by Community-Based Nonprofit Organizations (CBO), Residents Councils (RC), resident groups, and community groups. These grants are to promote the development of a CBO or RC and the resident-supported purchase of projects under the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

The 1992 awards announced in this Notice were selected for funding based on applications submitted pursuant to a **Federal Register** Notice published on September 3, 1992 (57 FR 40570). Applications were reviewed and selected for funding on the basis of selection criteria contained in that Notice.

Between January 1, 1993, and September 15, 1993, a total of $908,824 was awarded to 25 grantees, which consisted of resident groups, Resident

Councils, community groups, and Community-Based Nonprofit Organizations. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names (including, in parentheses, the names of the properties for which the grants were received), addresses, and amounts of those awards as follows:

LOW INCOME HOUSING: TECHNICAL ASSISTANCE PLANNING GRANTS FOR RESIDENT GROUPS, COMMUNITY GROUPS, COMMUNITY-BASED NONPROFIT ORGANIZATIONS AND RESIDENT COUNCILS

Allen Park Tenants Association, 129 Allen Park Road, Springfield, MA 01118 (Property: Allen Park Apartments, Springfield, MA)	$50,000
Amesbury Gardens Tenants Association, c/o Dorothy Chretien, 198 Amesbury Street, Lawrence, MA 01841 (Property: Amesbury Gardens Apartments, Lawrence, MA)	25,000
Homesavers Council of Greenfield Gardens, 17 Riverside Drive, Greenfield, MA 01301 (Property: Greenfield Gardens, Greenfield, MA)	25,000
Commonwealth Endowment Properties, Inc., 800 Park Street, Bolling Green, KY 42101 (Property: Guardian Court, Louisville, KY)	6,000
Carmen-Marine Tenants Association, 5030 N. Marine Drive, Apt. 2405, Chicago, IL 60640 (Property: Carmine-Marine Apartments, Chicago IL)	125,000
Edgewood Village Nonprofit Housing Corp., 606 West Shiawassee, Lansing, MI 48933 (Property: Edgewood Village Apartments, East Lansing, MI)	73,460
Assisi Homes—Jefferson Court, c/o Christine Nordberg, 5016 West Burleigh Street, Milwaukee, WI 53210 (Property: Jefferson Court Apartments, Milwaukee, WI)	664,000
West Chicago Preservation Corporation, 65 East Wacker Place, Suite 1800, Chicago, IL 60601 (Property: Town & Country Apartments, West Chicago, IL)	25,000
Franciscan Ministries, Inc., c/o Robert Cisek, 26 West 171 Roosevelt Road, Wheaton, IL 60189 (Property: Batavia Apartments, Batavia, IL)	25,000
The Peace Housing Corporation (4 Grants), c/o Reverend Robert L. Hadley, Jr., 5310 Fannie Street, Dallas, TX 75212, (Property: Rolling Meadows Apartments, Dallas, TX) (Property: Leigh Ann Apartments, Dallas, TX) (Property: El Capitan Apartments, Dallas, TX) (Property: Prairie Creek Manor, Dallas, TX)	100,000
Diamond View Tenants Association, c/o Roberta Stewart, 181 Addison Street, San Francisco, CA 94131 (Property: Diamond View Apartments, San Francisco, CA)	14,000
Mission Plaza Tenants Association, P.O. Box 31255, Los Angeles, CA 90031 (Property: Mission Plaza Apartments, Los Angeles, CA)	99,472
Sutter Terrace Association of Residents, 5808 Sutter Avenue #48, Carmichael, CA 95608 (Property: Sutter Terrace, Carmichael, CA)	25,000
Glenridge Residents Council, 11 Berkeley Way, San Francisco, CA 94131 (Property: Glenridge Apartments, San Francisco, CA)	50,000
Solano Affordable Housing Foundation, 1000 Webster Street, Fairfield, CA 94510 (Property: Crescent Village, Suisun City, CA)	25,000
Pleasant View Resident Council, 3537 N. Pleasant, #C, Fresno, CA 93705 (Property: Pleasant View Apartments, Fresno, CA)	25,000
Plymouth Housing Group, 1305 Fourth Avenue, Suite 417, Seattle, WA 98101 (Property: Ponderosa Apartments, Seattle, WA)	51,127
Laurelwood Gardens Resident Association, 29436 21st Avenue South #2, Federal Way, WA 98003 (Property: Laurelwood Gardens, Federal Way, WA)	25,000
Elizabeth James Senior Housing, 1535 11th Avenue, Seattle, WA 98122 (Property: Elizabeth James Apartments, Seattle, WA)	46,450
Grandview Apartments Resident Association, 1002 Hillcrest Road #B3, Grandview, WA 98930 (Property: Grandview Apartments, Grandview, WA)	18,315
Pacific Retirement Services, c/o Jill Collins, Rogue Valley Manor, 1200 Mira Mar, Medford, OR 97504 (Property: Royal Loto Apartments, Eagle Point, OR)	11,000

Dated: October 6, 1993.

Nicolas Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–25297 Filed 10–14–93; 8:45 am]

BILLING CODE 4210–27–M

[Docket Nos. N–93–3385; FR–3149–N–04 and N–93–3386; FR–3150–N–03]

Announcement of Funding Awards for Supportive Housing for Persons With Disabilities and for the Elderly

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of competitions for funding under the following two Notices of Funding Availability: (1) Supportive Housing for the Elderly and (2) Supportive Housing for Persons With Disabilities. The announcement contains the names and addresses of the award winners for these two competitions and the amounts of the awards.

DATES: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4542. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purposes of these competitions was to (1) provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly; and (2) provide assistance to private nonprofit organizations to expand the supply of supportive housing for persons With disabilities.

The 1992 awards announced in this Notice were selected for funding in competitions announced in **Federal Register** Notices published on March 6, 1992, at 57 FR 8218 and 8206.

A total of $365.6 million was awarded to Supportive Housing for the Elderly. The awards, under the Department's Section 202 housing program, were made to non-profit groups which will develop 6,023 rental units in 35 states and Puerto Rico.

A total of $91.5 million was awarded to Supportive Housing for Persons With Disabilities. The awards, under the Department's Section 811 program, financed 1,699 rental housing units for low-income people with disabilities. The funds, in the form of capital

advances, financed 149 applications from non-profit groups to develop projects in 37 states. The awards funded projects for persons with developmental disabilities, chronic mental illness and physical disabilities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names. addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: September 30, 1993.

Jeanne Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
* Region: Boston								
* State: CT								
Hartford	017-EE004/CT26-S921-001, Nat. Council of Senior Citizens, 117 C. Street, S.E., Washington, DC 20003.	Stonington Town, CT	M		1	76	5698700	303800
* Subsubtotal *					1	76	5698700	303800
* State: MA								
Boston	023-EE023/MA06-S921-003, Ahepa National Hsg, 10333 N. Meridian Street, Indianapolis, IN 46290.	Haverhill, MA	M		1	54	4163400	241700
Boston	023-EE026/MA06-S921-006, Brownstone Gardens, 75 Pleasant Street, East Longmeadow, MA 06095.	East Longmeadow, MA	M		1	40	2867600	179000
Boston	023-EE029/MA06-S921-009, Oak Hill Comm Development, 226 Grafton Street, Worcester, MA 01604.	Worcester, MA	M		1	50	3584500	219300
Boston	023-EE030/MA06-S921-010, Dorchester Housing, Inc., 1353 Dorchester Avenue, Dorchester, MA 02122.	Dorchester, MA	M	2	1	40	3100700	174600
Boston	023-EE032/MA06-S921-012, Jewish Comm Housing, 30 Wallingford Road, Brighton, MA 02135.	Newton, MA	M		1	75	5799200	335700
* Subsubtotal *					5	259	1951400	1150300
* State: ME								
Manchester	024-EE003/ME36-S921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Portland, ME	M		1	60	3652100	199200
* Subsubtotal *					1	60	3652100	199200
** Subtotal **					7	395	28866200	1653300
** Region: New York								
* State: NJ								
Newark	031-EE009/NJ39-S921-002, Spotswood Reformed Church, 429 Main Street, Spotswood, NJ 08854.	Spotswood, NJ	M		1	74	5717500	331100
Newark	031-EE010/NJ39-S921-005, The Presbyterian Homes of NJ Fund, Inc., P.O. Box 2184, Princeton, NJ 08543.	Middlesex, NJ	M		1	87	6753900	390000

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Newark	031-EE011/NJ39-S921-006, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	West Orange, NJ	M		1	58	4508100	258500
Newark	035-EE006/NJ39-S921-008, The Presbyterian Homes of NJ Fund, Inc., P.O. Box 2184, Princeton, NJ 08543.	Galloway Twp., NJ	M		1	84	5838100	341200
* Subsubtotal *					4	303	22817600	1320800
* State: NY								
New York	012-EE039/NY36-S921-001, Christ the King Church, 740 N Broadway, Yonkers, NY 10701.	Yonkers, NY	M		1	70	5681000	328600
New York	012-EE045/NY36-S921-007, 80-86 Housing Corp., 253 Clermont Ave., Brooklyn, NY 11205.	New York-Brooklyn, NY	M	2	1	91	7402900	422500
New York	012-EE051/NY36-S921-013, Mid-Bronx Senior Citizens, 900 Grand Concourse, Bronx, NY 10451.	New York-Bronx, NY	M	2	1	79	6429000	366100
New York	012-EE052/NY36-S921-014, National Baptist Convention, 383 Washington Street, Newark, OH 43055.	Mount Vernon, NY	M	2	1	98	7971000	455300
Buffalo	014-EE027/NY06-S921-005, United Church Homes, 170 E. Center St., Marion, OH 43302.	Olean,NY	NM		1	39	2254400	137100
Buffalo	014-EE029/NY06-S921-007, Roman Catholic Diocese of Albany, 40 N Main Street, Albany, NY 12203.	Colonie, NY	M		1	50	3144900	180500
Buffalo	014-EE030/NY06-S921-008, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Baldwinsville, NY	M		1	53	3369400	191400
Buffalo	014-EE031/NY06-S921-009, Catholic Charities of Syracuse, 240 E. Onondaga St., Utica, NY 13202.	Utica, NY	M		1	54	3446700	195000
Buffalo	014-EE032/NY06-S921-010, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Syracuse, NY	M		1	40	2556600	144400
Buffalo	014-EE033/NY06-S921-011, Catholic Charities of Syracuse, 240 E. Onondaga St., Syracuse, NY 13202.	Henderson, NY	NM		1	24	1525700	86700

Buffalo	014–EE037/NY06–S921–015, National Church Residences, 2335 N. Bank Dr., Columbus, OH 43220.	Clifton Park, NY	M		1	50	3158400	180500
Buffalo	014–EE038/NY06–S921–016, Rochester Health Care, 1425 Portland Avenue, Rochester, NY 14621.	Irondequoit, NY	M		1	55	3491600	194100
Subsubtotal					12	703	50431600	2882200
Subtotal					16	1006	73249200	4203000
**Region: Philadelphia								
*State: MD								
Baltimore	052–EE002/MD06–S921–002, Associated Catholic Charities, 320 Cathedral Street, Baltimore, MD 21201.	Baltimore, MD	M		1	90	5569400	297000
Subtotal					1	90	5569400	297000
*State: PA								
Pittsburgh	033–EE018/PA28–S921–002, Bayfront NATO Inc., 312 Chestnut Street, Erie, PA 16501.	Erie, PA	M	2	1	40	2299400	122900
Pittsburgh	033–EE019/PA28–S921–003, Presbyterian Association on Aging, 1215 Hulton Road, Oakmont, PA 15139.	Parker, PA	NM		1	27	1564500	79900
Pittsburgh	033–EE020/PA28–S921–004, Allied Human Services, Assoc., 44 S. Beaver St., New Castle, PA 16101.	New Castle, PA	NM		1	38	2184500	116800
Pittsburgh	033–EE021/PA28–S921–005, Action Housing, Inc., 603 Stanwix St, 2 Gateway Center, Pittsburgh, PA 15222.	East Pittsburgh, PA	M		1	40	2299400	122900
Pittsburgh	033–EE022/PA28–S921–006, Action Housing, Inc., 603 Stanwix St, 2 Gateway Center, Pittsburgh, PA 15222.	Pittsburgh, PA	M		1	40	2299400	122900
Pittsburgh	033–EE023/PA28–S921–007, Goodwill Industries of Pittsburgh, 2600 East Carson Street, Pittsburgh, PA 15203.	Bridgeville, PA	M		1	50	2886700	150600
Pittsburgh	033–EE025/PA28–S921–009, Uniontown Hospital, 500 W Berkeley Street, Uniontown, PA 15401.	Uniontown, PA	M		1	50	2886700	150600
Pittsburgh	033–EE028/PA28–S921–012, The Lutheran Service Society of Western PA, 3171 Babcock Blvd, Pittsburgh, PA 15237.	Oil City, PA	NM		1	50	2886700	150600
Philadelphia	034–EE010/PA26–S921–002, Frankford Group Ministry, 4620 Griscom Street, Philadelphia, PA 19124.	Philadelphia, PA	M		1	50	3432300	206600

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Philadelphia	034-EE011/PA26-S921-003, Bethesda House, 1800 Mill Road, Boothwyn, PA 19061.	Upper Chichester TWP, PA	M		1	61	4202200	247900
Subsubtotal					10	446	26941800	1471700
*State: VA								
Washington	000-EE007/VA39-S921-002, VA Diocesan Homes, 4800 Fillmore Avenue, Alexandria, VA 22311.	Fairfax, VA	M		1	50	3280100	177100
Richmond	051-EE014/VA36-S921-004, Virginia Mountain Housing, 930 Cambria St., Christiansburg, VA 24073.	Giles County, VA	NM		1	30	1522200	88500
Subsubtotal					2	80	4802300	265600
Subtotal					13	616	37313500	2034300
**Region: Atlanta								
*State: AL								
Birmingham	062-EE009/AL09-S921-002, Ahepa National HSG Corp/ Order of Ahepa #30, 10333 North Meridian St., Indianapolis, IN 46290.	Mobile, AL	M		1	50	2483400	134800
Birmingham	062-EE012/AL09-S921-005, The Episcopal Ch in the Diocese of Alabama, 521 20th Street N, Birmingham, AL 35203.	Birmingham, AL	M		1	41	1908200	105800
Subsubtotal					2	91	4391600	240600
*State: FL								
Jacksonville	066-EE011/FL29-S921-002, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Collier County, FL	M		1	40	2175900	108700
Jacksonville	067-EE018/FL29-S921-005, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Daytona Beach, FL	M		1	63	3121000	152600
Jacksonville	067-EE022/FL29-S921-010, Diocese of Orlando, 421 East Robinson St., Orlando, FL 32801.	Melbourne, FL	M		1	76	3752200	187000
Jacksonville	067-EE023/FL29-S921-012, First Baptist Church of Plant City, Inc., 102 N. Reynolds St., Plant City, FL 33506.	Plant City, FL	M		1	52	2602400	128000

Jacksonville	067–EE024/FL29–S921–015, Diocese of St. Petersburg, 6363 Ninth Ave North, St. Petersburg, FL 33710.	Tampa, FL	M		1	82	4103900	201800
Jacksonville	067–EE026/FL29–S921–017, Diocese of St. Petersburg, 6363 Ninth Ave. North, St. Petersburg, FL 33710.	Pinellas Park, FL	M		1	76	3803600	187000
Subsubtotal					6	389	19559000	965100
*State: GA								
Atlanta	061–EE009/GA06–S921–002, Broadway Towers, Inc., 1800 Century Blvd., NE, Atlanta, GA 30345.	Lawrenceville, GA	M		1	75	3713400	198700
Subsubtotal					1	75	3713400	198700
*State: KY								
Louisville	083–EE017/KY36–S921–006, Lake Cumberland Community Svcs Organization, PO Box 968, Somerset, KY 42502.	Somerset, KY	NM		1	24	1210100	68400
Subsubtotal					1	24	1210100	68400
*State: MS								
Jackson	065–EE006/MS26–S921–002, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Clinton, MS	M		1	60	2820200	159600
Jackson	065–EE007/MS26–S921–003, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Greenwood, MS	NM		1	40	1732400	105500
Subsubtotal					2	100	4552600	265100
*State: NC.								
Greensboro	053–EE014/NC19–S921–002, Roman Catholic Diocese of Raleigh, NC, 300 Cardinal Gibbons Drive, Raleigh, NC 27606.	Wilmington, NC	M		1	40	2447800	114000
Greensboro	053–EE018/NC19–S921–006, Metropolitan African Meth. Epis. Zion Church, 102 West Fourth St., Washington, NC 27889.	Washington, NC	NM	2	1	12	659300	34200
Greensboro	053–EE019/NC19–S921–007, Winston-Salem Housing Foundation, Inc., 411 N. Cherry Street, Winston-Salem, NC 27101.	Winston-Salem, NC	M		1	60	3368000	171000
Greensboro	053–EE020/NC19–S921–008, Winston-Salem Housing Foundation, 411 N. Cherry Street, Winston-Salem, NC 27101.	Mount Airy, NC	NM		1	24	1287600	68400
Greensboro	053–EE021/NC19–S921–009, United Order of Tents of J.R. Gidding, 1620 Church Street, Norfolk, VA 23504.	Rocky Mount, NC	NM		1	48	2637300	136800

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Greensboro	053-EE022/NC19-S921-010, John H. Wellons Foundation, PO Box 1254, Dunn, NC 28334.	Goldsboro, NC	NM		1	44	2417600	125400
Subsubtotal					6	228	12817600	649800
*State: PR								
Caribbean	056-EE007/RQ46-S921-001, Ciales Primary Health Care Specialities, PO Box 1427, Ciales, PR 00638.	Ciales Municipio, PR	NM	4	1	104	5837900	274900
Subsubtotal					1	104	5837900	274900
*State: TN								
Nashville	081-EE008/TN40-S921-004, Wesley Housing Corporation, 400 South Highland, Memphis, TN 38111.	Martin, TN	NM		1	41	1848700	107400
Nashville	081-EE009/TN40-S921-005, Wesley Housing Corporation, 400 South Highland, Memphis, TN 38111.	Adamsville, TN	NM		1	25	1109200	64500
Knoxville	087-EE006/TN37-S921-004, Douglas-Cherokee Economic Authority, PO Box 1218, Morristown, TN 37816.	Spring City, TN	NM		1	31	1467200	78700
Knoxville	087-EE007/TN37-S921-005, Douglas-Cherokee Economic Authority, PO Box 1218, Morristown, TN 37816.	Benton, TN	NM		1	24	1101500	63000
Subsubtotal					4	121	5526600	313600
Subtotal					23	1132	57608800	2976200
**Region: Chicago								
*State: IL								
Chicago	071-EE028/IL06-S921-007, Catholic Charities, 1571 West Ogden Ave., La Grange Pk., IL 60525.	Chicago, IL	M		1	61	4015900	199100
Chicago	071-EE029/IL06-S921-008, Catholic Charities, 1571 West Ogden Avenue, La Grange Park, IL 60525.	Mount Prospect, IL	M		1	75	4920200	244800
Chicago	071-EE030/IL06-S921-009, Lutheran Social Services of Illinois, 1001 Touhy Ave., Des Plaines, IL 60018.	Dolton, IL	M		1	100	6574400	326400

Chicago	071-EE036/IL06-S921-015, Chicago Dwelling Association, 360 N. Michigan, Chicago, IL 60601.	Chicago, IL	M	2	1	52	3411300	169700
Chicago	071-EE038/IL06-S921-017, Ben Frankel Lodge and B'nai B'rith, 1127N. North Street, Peoria, IL 61605.	Peoria, IL	M		1	72	3418800	235000
Subsubtotal					5	360	22340600	1175000
*State: IN								
Indianapolis	073-EE022/IN36-S921-010, Lutheran Social Services of the Miami Valley, 6445 Far Hills Avenue, Dayton, OH 45459.	Columbus, IN	NM		1	40	2204800	121300
Subsubtotal					1	40	2204800	121300
*State: MI								
Detroit	044-EE013/M128-S921-002, Lutheran Social Services of Michigan, 8131 E. Jefferson, Detroit, MI 48214.	Ann Arbor, MI	M		1	56	3408600	190500
Subsubtotal					1	56	3408600	190500
*State: MN								
Minneapolis	092-EE007/MN46-S921-002, Resource Development Council of Cook County, PO Box 57, Grand Marais, MN 55604.	Grand Marais, MN	NM		1	24	1375700	79200
Minneapolis	092-EE008/MN46-S921-003, Westminster Corporation, 328 W Kellogg Blvd., St. Paul, MN 55102.	Fridley, MN	M		1	51	3134700	168300
Minneapolis	092-EE009/MN46-S921-004, St. Mary's Villa, Inc., Faust St. & 1st Ave. S, Pierz, MN 56364.	Pierz, MN	NM		1	16	884300	52800
Subsubtotal					3	91	5394700	300300
*State: OH								
Cleveland	042-E0017/OH12-S921-017, Holy Redeemer Catholic Church, 15712 Kipling Avenue, Cleveland, OH 44110.	Cleveland, OH	M		1	51	2991900	170100
Cleveland	042-EE021/OH12-S921-021, Alpha Omega Foundation, P.O. Box 93717, Cleveland, OH 44101.	Cleveland, OH	M	2	1	54	3329100	183700
Cleveland	042-EE023/OH12-S921-023, ETA Tau Lambda Chapter, Alpha Phi Alpha, 695 Dunbar Drive, Akron, OH 44311.	Warren, OH	M	2	1	40	2067200	132600
Columbus	043-EE015/OH16-S921-002, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Dublin, OH	M		1	60	3258000	180700

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Columbus	043-EE017/OH16-S921-004, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Columbus, OH	M		1	60	3246300	180700
Columbus	043-EE018/OH16-S921-005, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Coshocton, OH	NM		1	40	2164200	120500
Columbus	043-EE020/OH16-S921-007, Catholic Diocese of Columbus, 198 East Broad Street, Columbus, OH 43215.	Washington Court Hse, OH	NM		1	40	2164200	120500
Columbus	043-EE020/OH16-S921-008, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Grove City, OH	M		1	55	2975800	165700
Cincinnati	046-EE005/OH10-S921-001, Warren County Community Services, Inc., 570 North State Route 74, Lebanon, OH 45036.	South Lebanon, OH	M		1	42	2286600	134400
Cincinnati	046-EE06/OH10-S921-002, Lutheran Social Services of the Miami Valley, 6445 Far Hills Ave., Dayton, OH 45459.	Milford, OH	M		1	40	2177700	128000
Subsubtotal					10	482	26661000	1516900
*State: WI								
Milwaukee	075-EE010/WI39-S921-005, Arlington Clergy, 514 East Grant Street, Poynette, WI 53955.	Poynette, WI	NM		1	22	1223000	68000
Subsubtotal					1	22	1223000	68000
Subtotal					21	1051	61232700	3372000
**Region: Fort Worth								
*State: AR								
Little Rock	082-EE025/AR37-S921-001, White River Regional HSG Development Corp., P.O. Box 650, Melbourne, AR 72556.	Cave City, AR	NM		1	16	672200	39000
Little Rock	082-EE029/AR37-S921-005, Area Agency on Aging of NW Arkansas, P.O. Box 1795, Harrison, AR 72601.	Gravette, AR	NM		1	20	840300	48700
Little Rock	082-EE032/AR37-S921-008, North Arkansas Human Services System, Inc., P.O. Box 2578, Batesville, AR 72503.	Harrisburg, AR	NM		1	20	840300	48700

Subsubtotal					3	56	2352800	136400
State: LA								
New Orleans	064–EE010/LA48–S921–002, Our Lady of the Lake Hospital, 7777 Hennessy Blvd., Baton Rouge, LA 70808.	Baton Rouge, LA	M		1	67	3096600	188200
New Orleans	064–EE015/LA48–S921–007, Evangeline Council on Aging, P.O. Box 312, Ville Platte, LA 70586.	Ville Platte, LA	NM		1	50	2294800	140400
Subsubtotal					2	117	5391400	328600
*State: OK								
Oklahoma City	117–EE005/OK56–S921–008, Harrah Senior Citizens, P.O. Box 881, Harrah, OK 73045.	Harrah, OK	M		1	40	1793300	102300
Oklahoma City	118–EE004/OK56–S921–001, Sand Springs Welfare Association, Inc., 106 North Garfield, San Springs, OK 74063.	Sand Springs, OK	M		1	80	3619900	213700
Subtotal					2	120	5413200	316000
*State: TX								
Fort Worth	112–EE005/TX16–S921–001, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Grand Prairie, TX	M		1	40	1971900	114000
Houston	114–EE013/TX24–S921–003, National Benevolent Association, 11780 Borman Drive, St. Louis, MO 63146.	Houston, TX	M		1	58	2902700	164100
Houston	114–EE014/TX24–S921–014, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Bay City, TX	NM		1	61	2927700	172600
San Antonio	115–EE009/TX59–S921–004, Rural Economic Assistance League, Inc., 1300 Wyoming St., Alice, TX 78332.	Freer, TX	NM	4	1	24	1071800	60400
Subsubtotal					4	183	8874100	511100
Subtotal					11	476	22031500	1292100
**Region: Kansas City								
State: IA								
Des Moines	074–EE007/IA05–S921–003, First Church of the Open Bible, 2200 Beaver Ave., Des Moines, IA 50310.	Des Moines, IA	M		1	44	2172300	121800
Des Moines	074–EE008/IA05–S921–004, Area IV Agency on Aging, 508 Frances Building, Sioux City, IA 51101.	Sioux City, IA	M		1	40	1939200	110700
Subsubtotal					2	84	4111500	232500
*State: KS								

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Kansas City	102-EE005/KS16-S921-001, Mennonite Housing Rehabilitation Services, 2145 North Topeka, Wichita, KS 67214.	Wichita, KS	M		1	48	2094400	130800
Subsubtotal					1	48	2094400	130800
*State: MO								
St. Louis	085-EE008/MO36-S921-001, National Benevolent Assoc./ Hylton Point Hsg, 11780 Borman Dr., St. Louis, MO 63146.	St. Louis, MO	M		1	72	4236400	234700
St. Louis	085-EE013/MO36-S921-006, Cardinal Ritter Institute, 4483 Lindell Blvd., St. Louis, MO 63108.	St. Louis, MO	M		1	75	4413000	244500
Subsubtotal					2	147	8649400	479200
*State: NE								
Omaha	103-EE006/NE26-S921-002, Beatrice Community Hospital & Health Center, 1110 North 10th Street, Beatrice, NE 68310.	Plymouth, NE	NM		1	8	372300	22300
Subsubtotal					1	8	372300	22300
Subtotal				6	287	15227600	864800	
**Region: Denver								
*State: CO								
Denver	101-EE003/CO99-S921-001, Brothers Redevelop, 1111 Osage Street, Denver, CO 80204.	Denver, CO	M		1	81	4284300	241100
Subsubtotal					1	81	4284300	241100
*State: WY								
Denver	109-EE002/WY99-S921-002, Volunteers of America, 3813 N Causeway Blvd., Metairie, LA 70002.	Goshen County, WY	NM		1	40	1890300	99900
Subsubtotal					1	40	1890300	99900
Subtotal					2	121	6174600	341000
**Region: San Francisco								
State: CA								
San Francisco	121-EE015/CA39-S921-002, Satellite Senior Housing, 540 21st Street, Oakland, CA 94612.	Newark, CA	M		1	50	3922600	211200

San Francisco	121–EE018/CA39–S921–005, Catholic Charities, 3180 18th Street, San Francisco, CA 94110.	San Rafael, CA	M		1	62	4733700	257600
Los Angeles	122–EE021/CA16–S921–002, First United Methodist Church of Los Angeles, 1010 S. Flower, Los Angeles, CA 90015.	Los Angeles, CA	M		1	75	5125800	296000
Los Angeles	122–EE022/CA16–S921–003, National Council of Senior Citizens, 1331 F Street NW., Washington, DC 20004.	Los Angeles, CA	M		1	71	4879000	280000
Los Angeles	122–EE030/CA16–S921–011, The Salvation Army, 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90274.	San Diego, CA	M		1	125	8934300	459600
Los Angeles	122–EE031/CA16–S921–012, Wesley Homes, Inc., 340 Harvard Road, Burbank, CA 91502.	Burbank, CA	M		1	121	8689900	481900
Sacramento	136–EE003/CA30–S921–001, The Salvation Army, 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90274.	Stockton, CA	M		1	83	5234000	290600
Sacramento	136–EE004/CA30–S921–002, Volunteers of America, 3813 N Causeway Blvd., Metairie, LA 70002.	Auburn, CA	M		1	60	3746600	209100
Subsubtotal					8	647	45265900	2486000
*State: HI								
Honolulu	140–EE004/HI10–S921–001, Hale Mahaolu, Inc., 200 Hina Avenue, Kahului, HI 96732.	Kahului, HI	NM	5	1	55	4282400	248700
Subsubtotal					1	55	4282400	248700
*State: NV								
San Francisco	121–EE023/NV39–S921–001, Volunteers of America, 3813 N. Causeway Boulevard, Metairie, LA 70002.	Boulder City, NV	M		1	60	3361400	188600
San Francisco	121–EE026/NV39–S921–004, The Salvation Army, 30840 Hawthorne Boulevard, Rancho Palos Verdes, CA 90274.	Reno, NV	M		1	57	3308500	179000
Subsubtotal					2	117	6669900	367600
Subtotal					11	819	56218200	3102300
**Region: Seattle								
*State: WA								
Seattle	127–EE005/WA19–S921–001, Stillasuamish Senior Center, 18308 35th NE., Arlington, WA 98223.	Arlington, WA	M		1	40	2556600	122400
Seattle	127/EE006–WA19–S921–002, Senior Services of Snohomish County, 8225 44th Ave. W, Mukilteo, WA 98275–2851.	Lynnwood, WA	M		1	40	2556600	122400

SECTION 202.—PROGRAM FOR THE ELDERLY—FISCAL YEAR 1992 SELECTIONS—Continued

[To Accompany HUD 92-67]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Seattle	127-EE007/WA19-S921-003, Sisters of Providence of Washington, 516 Pike St., Seattle, WA 98111.	Chehalis, WA	NM		1	40	2556600	125500
Subsubtotal					3	120	7669800	370300
Subtotal					3	120	7669800	370300
Total					113	6023	365592100	20209300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
**Region: Boston									
*State: MA									
Boston	023-HD016/MA06-Q921-001, Health & Educational Services, 162 Federal Street, Salem, MA 01970.	Salem, MA	M		1	12	CMI	975400	53700
Boston	023-HD017/MA06-Q921-002, Mental Health Prog, 28 Travis Street, Boston, MA 02134.	Boston, MA.	M		1	14	CMI	1146600	67200
Boston	023-HD018/MA06-Q921-003, Mental Health Association, Inc., 146 Chestnut Street, Springfield, MA 01103.	Springfield, MA.	M		1	10	WDD	413200	44800
Boston	023-HD019/MA06-Q921-004, North Suffolk Mental Health Association, 301 Broadway, Chelsea, MA 02150.	Newburyport, MA.	M		1	9	CMI	633900	5600
Boston	023-HD020/MA06-Q921-020, Advocates, Inc., 27 Hollis Street, Framingham, MA 01701.	Marlborough, MA.	M		1	5	CMI	414000	22300
Boston	023-HD021/MA06-Q921-006, Ctr Middlesex Arc, 17 Everberg Road, Woburn, MA 01801.	Wilmington, MA.	M		1	4	WDD	314000	17900
Boston	023-HD022/MA06-Q921-007, UCP of Western Massachusetts, 342 Birnie Avenue, Springfield, MA 01107.	Springfield, MA.	M		1	4	WDD	292000	17900
Boston	023-HD023/MA06-Q921-008, South Shore Arc, Inc., 371 River Street, Box 58, N.Weymouth, MA 02191.	Hingham, MA.	M		1	4	WDD	314100	17900
Boston	023-HD024/MA06-Q921-009, Cascap, Inc., 678 Massachusetts Avenue, Cambridge, MA 02139.	Somerville, MA.	M		1	8	CMI	359700	35800
Boston	023-HD025/MA06-Q921-010, Pine St Inn, Inc., 444 Harrison Avenue, Boston, MA 02118.	Boston, MA.	M		1	12	CMI	408500	53700
Subsubtotal					10	83		5271400	336800

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Subtotal					10	83		5271400	336800
**Region: New York									
*State: NJ									
Newark	031-HD010/NJ39-Q921-011, Cerebral Palsy Essex West Hudson, 31-35 Cuozzo Street, Belleville, NJ 07109.	Belleville Twp, NJ.	M		1	6	WDD	376600	27200
Newark	031-HD011/NJ39-Q921-013, Assn for Retarded Citizens, Union County, 1225 South Avenue, Plainfield, NJ 07062.	Roselle, NJ.	M		1	6	CMI	560500	22600
Newark	035-HD006/NJ39-Q921-001, Multiple Sclerosis Association of America, 601-605 White Horse Pike, Oaklyn, NJ 08107.	Florence Twp, NJ.	M		1	24	WPD	1677200	98600
Newark	035-HD008/NJ39-Q921-005, Multiple Sclerosis Association of America, 601 White Horse Pike, Oaklyn, NJ 08107.	Gloucester Twp., NJ.	M		1	25	WPD	1694900	98600
Newark	035-HD009/NJ39-Q921-006, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Egg Harbor City, NJ.	M		1	3	CMI	274700	12300
Newark	035-HD010/NJ39-Q921-007, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Greenwich Twp, NJ.	M		1	3	CMI	274700	12300
Newark	035-HD011/NJ39-Q921-008, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Trenton, NJ.	M		1	3	CMI	274700	12300
Newark	035-HD012/NJ39-Q921-009, Collaborative Support Programs of New Jersey, #5 Route 33, Freehold, NJ 07728.	Atlantic City, NJ.	M		1	3	CMI	274700	12300
Newark	035-HD013/NJ39-Q921-012, Community Options, Inc., 3rd Street, Bordentown, NJ 08505.	Hightstown, NJ.	M		1	10	WDD	641600	41100
Subsubtotal					9	84		6049600	337300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
*State: NY									
New York	012-HD010/NY36-Q921-001, The Bridge, Inc., 248 W 108 St, New York, NY 10025.	New York-Manhattan, NY.	M		1	21	CMI	1486800	93900
New York	012-HD011/NY36-Q921-002, Help Me, Inc., 164 Eckerson Rd, Spring Valley, NY 10937.	Clarkstown Town, NY.	M		1	25	WPD	2099000	112700
Buffalo	014-HD005/NY06-Q921-001, Lifetime Assistance, 425 Paul Rd, Rochester, NY 14624.	Clarkson, NY.	M		1	12	WDD	427800	42400
Buffalo	014-HD006/NY06-Q921-002, People, Inc, 737 Delaware Ave, Buffalo, NY 14209.	Silver Creek, NY.	NM		1	6	WDD	285800	28200
Subsubtotal					4	64		4299400	277200
Subtotal					13	148		10349000	614500
**Region: Philadelphia									
*State: DE									
Philadelphia	032-HD003/DE26-Q921-001, Alliance for the Mentally Ill in Delaware, 2500 W. 4th Street Suite 12, Wilmington, DE 19805.	Wilmington, DE.	M		1	12	CMI	939200	45500
Subsubtotal					1	12		939200	45500
*State: MD									
Baltimore	052-HD003/MD06-Q921-003, Way Station Inc, P.O. Box 3826, Frederick, MD 21701.	Frederick, MD.	M		1	13	CMI	868600	42900
Subsubtotal					1	13		868600	42900
*State: PA									
Pittsburgh	033-HD008/PA28-Q921-002, Hands, Inc., 139 East 12th Street, Erie, PA 16501.	Erie, PA	M		1	20	CMI	1098900	61400
Pittsburgh	033-HD010/PA28-Q921-004, Action Housing Inc, 603 Stanwix Street, Two Gateway Center, Pittsburgh, PA 15222.	McKeesport, PA.	M		1	15	CMI	846800	46100
Pittsburgh	033-HD011/PA28-Q921-005, Verland Cla, 212 Iris Road, Sewickley, PA 15143.	Cheswick, PA.	M		1	4	WDD	234100	12200

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Pittsburgh	033-HD012/PA28-Q921-006, Presbyterian Association on Aging, 1215 Hulton Road, Oakmont, PA 15139.	Plum, PA	M		1	11	CMI	672300	30700
Philadelphia	034-HD012/PA26-Q921-003, Step-by-Step, Inc., 69 Public Square, Suite 1400, Wilkes-Barre, PA 18701.	Bethlehem, PA.	M		1	5	CMI	308600	18900
Subsubtotal					5	55		3160700	169300
*State: VA									
Richmond	051-HD007/VA36-Q921-001, VA United Methodist Hsg Dev Corp, 308 Hanover Street, Fredericksburg, VA 22401.	Stafford County, VA.	M		1	6	WDD	244500	17700
* Subsubtotal *					1	6		244500	17700
State: WV									
Charleston	045-HD004/WV15-Q921-001, Northwood Health Systems Inc., 111 Nineteenth Street, Wheeling, WV 26003.	Wheeling, WV.	M		1	12	WDD	670900	38100
* Subsubtotal *					1	12		670900	38100
Subtotal **					9	98		5883900	313500
** Region: Atlanta									
* State: AL									
Birmingham	062-HD011/AL09-Q921-001, Volunteers of America, 3813 N Causeway Blvd, Metairie, LA 70002.	Mobile, AL	M		1	8	WDD	232000	21200
Birmingham	062-HD013/AL09-Q921-003, Clarke Co Association for Retarded Citizens, 501 Forest Avenue, Jackson, AL 36545.	Jackson, AL.	NM		1	9	WDD	232000	21200
Birmingham	062-HD014/AL09-Q921-004, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Fayette, AL.	NM		1	11	CMI	469300	26500
Birmingham	062-HD015/AL09-Q921-005, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Sulligent, AL.	NM		1	6	CMI	255900	15900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Birmingham	062-HD016/AL09-Q921-006, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Cordova, AL.	M		1	15	CMI	275900	37100
Birmingham	062-HD017/AL09-Q921-007, NW Alabama Mental Health Foundation, 1100 7th Avenue, Jasper, AL 35501.	Carbon Hill, AL.	M		1	7	WDD	224200	15900
* Subsubtotal *					6	56		1689300	137800
* State: FL									
Jacksonville	067-HD007/FL29-Q921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Bradenton, FL.	M		1	12	CMI	566200	27100
* Subsubtotal *					1	12		566200	27100
* State: GA									
Atlanta	061-HD008/GA06-Q921-001, Cherokee Day Training Center, Route 6 Univeter Road, Canton, GA 30114.	Cherokee County, GA.	M		1	10	WDD	402000	21500
Atlanta	061-HD010/GA06-Q921-003, GA Rehabilitation Institute, 1355 Independence Drive, Augusta, GA 30901.	Augusta, GA.	M		1	3	WPD	170700	8100
Atlanta	061-HD011/GA06-Q921-004, Christian Assoc for the Retarded, Inc., P.O. Box 973, Tucker, GA 30085.	De Kalb County, GA.	M		1	5	WDD	201000	10800
Atlanta	061-HD013/GA06-Q921-006, Resources for Retarded Adults, Inc., 1200 Old Ellis Road, Roswell, GA 30076.	Fulton County, GA.	M		1	15	WDD	603000	32300
* Subsubtotal *					4	33		1376700	72700
*State: KY									
Louisville	083-HD019/KY36-Q921-003, Day Spring, Inc./New Direction HSG Corporation, 901 Iola Road/2306 W Mar, Louisville, KY 40207.	Louisville, KY.	M		1	16	WDD	508100	39900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Louisville	083-HD020/KY36-Q921-004, Bluegrass Regional MH/MR Board, Inc., P.O. Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD022/KY36-Q921-006, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD023/KY36-Q921-007, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Lexington-Fayette, KY.	M		1	4	WDD	200700	8600
Louisville	083-HD024/KY36-Q921-008, Communicare, 1311 North Dixie, Elizabethtown, KY 42701.	Elizabethtown, KY.	NM		1	3	WDD	200700	8600
Louisville	083-HD025/KY36-Q921-009, Bluegrass Regional MH/MR Board, Inc., PO Box 11428, Lexington, KY 40575.	Frankfort, KY.	NM		1	13	CMI	665800	34200
Subsubtotal					6	44		1976700	108500
*State: MS									
Jackson	065-HD002/MS26-Q921-001, Regional Mental Hlth and Mental Retardation, 302 North Jackson Street, Starkville, MS 39759.	West Point, MS.	NM		1	15	CMI	642000	37900
Jackson	065-HD003/MS26-Q921-002, Right to Succeed, Inc., PO Box 127-B, Whitfield, MS 39193.	Laurel, MS	NM		1	9	WDD	235300	21700
Jackson	065-HD004/MS26-Q921-003, Right to Succeed, Inc., PO Box 127-B, Whitfield, MS 39193.	Pearl, MS	M		1	12	WDD	539100	29800
Subsubtotal					3	36		1416400	89400
*State: NC									
Greensboro	053-HD035/NC19-Q921-001, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Durham, NC.	M		1	7	WDD	280300	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053-HD036/NC19-Q921-002, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Mount Airy, NC.	NM		1	7	WDD	258500	17100
Greensboro	053-HD037/NC19-Q921-003, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Mount Airy, NC.	NM		1	7	WDD	258500	17100
Greensboro	053-HD038/NC19-Q921-004, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Lumberton, NC.	NM		1	7	WDD	280300	17100
Greensboro	053-HD039/NC19-Q921-005, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27619.	Windsor, NC.	NM		1	7	WDD	264700	17100
Greensboro	053-HD040/NC19-Q921-006, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Roxboro, NC.	NM		1	7	WDD	280300	17100
Greensboro	053-HD041/NC19-Q921-007, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Warsaw, NC.	NM		1	7	WDD	271000	17100
Greensboro	053-HD042/NC19-Q921-008, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gastonia, NC.	M		1	6	WDD	246500	14300
Greensboro	053-HD043/NC19-Q921-009, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Elon College, NC.	M		1	7	WDD	258500	17100
Greensboro	053-HD044/NC19-Q921-010, Arcnc, Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gibsonville, NC.	M		1	7	WDD	258400	17100
Greensboro	053-HD045/NC19-Q921-011, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Candor, NC.	NM		1	7	CMI	247700	17100
Greensboro	053-HD046/NC19-Q921-012, Residential Support Services, Inc., 5601 Executive Center Dr, Charlotte, NC 28212.	Charlotte, NC.	M		1	7	WDD	261600	17100
Greensboro	053-HD047/NC19-Q921-013, Residential Support Services, Inc., 5601 Executive Center Dr, Charlotte, NC 28212.	Charlotte, NC.	M		1	7	WDD	261600	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053-HD048/NC19-Q921-014, Autism Society of North Carolina, 3300 Woman's Club Drive, Raleigh, NC 27612.	Charlotte, NC.	M		1	7	WDD	261600	17100
Greensboro	053-HD049/NC19-Q921-015, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Gastonia, NC.	M		1	6	WDD	246500	14300
Greensboro	053-HD050/NC19-Q921-016, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Lexington, NC.	M		1	7	WDD	258500	17100
Greensboro	053-HD051/NC19-Q921-017, Arc NC Inc. & Arc/Hds, 16 Rowan Street, Raleigh, NC 27609.	Salisbury, NC.	M		1	7	WDD	261600	19100
Greensboro	053-HD052/NC19-Q921-018, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Charlotte, NC.	M		1	7	CMI	247700	17100
Greensboro	053-HD053/NC19-Q921-019, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Sparta, NC	NM		1	7	CMI	244700	17100
Greensboro	053-HD054/NC19-Q921-020, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Asheville, NC.	M		1	7	CMI	250600	17100
Greensboro	053-HD055/NC19-Q921-021, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Angier, NC	M		1	7	CMI	265400	17100
Greensboro	053-HD056/NC19-Q921-022, Mental Health Association in NC, Inc., 3820 Bland Road, Raleigh, NC 27609.	Morehead City, NC.	NM		1	9	CMI	505800	22800
Greensboro	053-HD057/NC19-Q921-023, 1st Presbyterian Church, 125 Meeting Street, Statesville, NC 28677.	Statesville, NC.	NM		1	7	WDD	261600	17100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Greensboro	053-HD058/NC19-Q921-024, Mental Health Association in NC, Inc., 3820 Bland Street, Raleigh, NC 27609.	Chapel Hill, NC.	M		1	14	CMI	814400	37100
Subsubtotal					24	175		7046300	432500
* State: SC									
Columbia	054-HD023/SC16-Q921-002, First Baptist Church of Manning, Post Office Box 610, Manning, SC 29102.	Manning, SC.	NM		1	12	WDD	581700	31800
Columbia	054-HD026/SC16-Q921-005, Union Services Inc., 814 West South Blvd., Union, SC 29379.	Union, SC	NM		1	3	WDD	194300	8000
Columbia	054-HD027/SC16-Q921-006, Laurens County Assoc. for Retarded Citizens, Post Office Box 735, Laurens, SC 29360.	Clinton, SC	NM		1	12	WDD	852200	31800
Columbia	054-HD030/SC16-Q921-009, Orangeburg Association for Retarded Citizens, Post Office Box 1812, Orangeburg, SC 29115.	Orangeburg, SC.	NM		1	12	WDD	852200	31800
Columbia	054-HD034/SC16-Q921-013, Tri-Development Ctr of Aiken County, Inc., Post Office Box 698, Aiken, SC 29802.	New Ellenton, SC.	M		1	8	WDD	428700	15900
* Subsubtotal*					5	47		2909100	119300
*State: TN									
Nashville	081-HD008/TN40-Q921-002, Shelby Residential & Vocational Svcs, Inc., 3592 Knight Arnold Road, Memphis, TN 38118.	Memphis, TN.	M		1	6	WDD	277300	13500
Knoxville	087-HD007/TN37-Q921-003, Rainbow Homes, Inc. & Watauga MH Services, P.O. Box 1397, 802 Buffa, Johnson City, TN 37605.	Johnson City, TN.	M		1	9	CMI	212100	21000

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Knoxville	087-HD008/TN37-Q921-004, Arc of Washington County, Inc., Northridge Center, Johnson City, TN 37601.	Johnson City, TN.	M		1	9	WDD	224200	21000
* Subsubtotal*					3	24		713600	55500
* Subtotal*					52	427		17694300	1042800
** Region: Chicago									
* State: IL									
Chicago	071-HD022/IL06-Q921-009, Chicago Urban Day & Antioch M.B. Church, 1248 W. 69th St., Chicago, IL 60636.	Chicago, IL	M	2	1	26	WPD	2260900	84800
Chicago	072-HD021/IL06-Q921-008, Champaign County Mental Health Center, 600 E. Park St., P.O. Bo, Champaign, IL 61824.	Champaign County, IL.	M		1	16	CMI	1003200	52000
* Subsubtotal*					2	42		3264100	136800
* State: IN									
Indianapolis	073-HD011/IN36-Q921-004, Quinco Consulting Center, Inc., 2075 Lincoln Park Drive, Columbus, IN 47201.	Columbus, IN.	NM		1	21	CMI	950200	60600
Indianapolis	073-HD013/IN36-Q921-006, Madison Center, Inc., 403 E Madison Street, South Bend, IN 46619.	South Bend, IN.	M		1	8	CMI	157700	24200
* Subsubtotal*					2	29		1107900	84800
* State: MI									
Detroit	044-HD004/MI28-Q921-002, Innovative Housing, 3060 Commerce Drive, Port Huron, MI 48080.	Port Huron, MI.	M		1	12	WDD	698100	40800
Grand Rapids	047-HD008/MI33-Q921-005, Hope Network, 6850 S Division, Grand Rapids, MI 49508.	Grand Rapids, MI.	M		1	24	WDD	1393800	67800
* Subsubtotal*					2	36		2091900	108600
* State: MN									
Minneapolis	092-HD008/MN46-Q921-001, Westminster Corporation, 328 Kellogg Blvd, St. Paul, MN 55102.	Crystal, MN.	M		1	7	CMI	428400	23100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Minneapolis	092-HD010/MN46-Q921-003, Accessible Space, Inc., 2550 University Avenue W, St Paul, MN 55101.	Austin, MN	NM		1	24	WPD	1366900	79200
Minneapolis	092-HD011/MN46-Q921-004, Accessible Space, Inc., 2550 University Ave W, St Paul, MN 55114.	Burnsville, MN.	M		1	24	WPD	1508600	79200
* Subsubtotal*					3	55		3303900	181500
* State: OH.									
Cleveland	042-HD010/OH12-Q921-010, Maximum Independence, 11607 Euclid Avenue, Cleveland, OH 44106.	Eastlake, OH.	M		1	24	WPD	1396000	78200
Columbus	043-HD007/OH16-Q921-001, Residential Connections of Delaware, Inc., 700 Belleview Court, Delaware, OH 43015.	Delaware, OH.	M		1	10	WDD	440700	24100
Columbus	043-HD008/OH16-Q921-002, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Columbus, OH.	M		1	20	WPD	1082100	60200
Columbus	043-HD009/OH16-Q921-003, Community Housing Network, 255 East Livingston Aven, Columbus, OH 43215.	Columbus, OH.	M		1	12	CMI	620500	36100
Cincinnati	046-HD006/OH10-Q921-002, Miami Valley Housing Opportunities, Inc., 405 W. First Street, Dayton, OH 45402.	Dayton, OH.	M		1	8	CMI	416200	25600
Cincinnati	046-HD007/OH10-Q921-003, Miami Valley Housing Opportunities, Inc., 405 W. First St., Dayton, OH 45402.	Kenia, OH	M		1	8	CMI	416200	25600
* Subsubtotal*					6	82		4371700	249800
* State: WI									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Milwaukee	075-HD011/WI39-Q921-001, Goodwill Industries of Southeastern Wisc., 6055 North 91 Street, Milwaukee, WI 53225.	Milwaukee, WI.	M		1	12	WDD	748600	34000
* Subsubtotal*					1	12		748600	34000
** Subtotal**					16	256		14888100	79550
** Region: Fort Worth									
* State: AR									
Little Rock	082-HD008/AR37-Q921-002, Pathfinder Schools, Inc., P.O. Box 647, Jacksonville, Ar 72076.	Jacksonville, Ar.	M		1	19	WDD	615000	43900
Little Rock	082-HD009/AR37-Q921-003, East Arkansas Regional MH Center, Inc., 305 Valley Drive, Helena, AR 72342.	Forrest City, AR.	NM		1	9	CMI	205000	19500
* Subsubtotal*						2	28	820000	63400
* State: LA									
New Orleans	064-HD010/LA48-Q921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Ruston, LA	NM		1	16	CMI	687700	45000
New Orleans	064-HD011/LA48-Q921-002, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Alexandria, LA.	M		1	18	CMI	791200	45800
New Orleans	064-HD012/LA48-921-003, Volunteers of America, 3813 N. Causeway Blvd., Metaire, LA 70002.	Lake Charles, LA.	M		1	19	CMI	1010900	53400
New Orleans	064-HD014/LA48-Q921-005, Evergreen Presbyterian Ministries, P.O. Box 72360, Bossier City, LA 71172.	Shreveport, LA.	M		1	16	WDD	687700	40700
New Orleans	064-HD016/LA48-Q921-007, Roman Catholic Diocese of Lafayette, 1408 Carmel Avenue, Lafayette, LA 70501.	Lafayette, LA.	M		1	20	CMI	917900	56200
* Subsubtotal*					5	89		4095400	241100
* State: TX									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Fort Worth	112-HD002/TX16-Q921-001, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Grand Prairie, TX.	M		1	12	WDD	451700	34200
San Antonio	115-GD005/TX59-Q921-001, New Milestones Foundation, Inc., 1430 Collier Street, Austin, TX 78704.	Austin, TX	M		1	11	CMI	504800	28900
San Antonio	15-HD006/TX59-Q921-002, New Milestones Foundation, Inc., 1430 Collier Street, Austin, TX 78704.	Austin, TX	M		1	11	CMI	504800	28900
* Subsubtotal*					3	34		1461300	92000
** Subtotal**					10	151		6376700	396500
** Region: Kansas City									
* State: KS									
Kansas City	084-HD008/KS16-Q921-002, Center for Developmentally Disabled, 3549 Broadway, Kansas City, MO 64111.	Kansas City, KS.	M		1	16	CMI	832500	43400
Kansas City	102-HD011/KS16-Q921-004, Southwest Developmental Services, Inc., 2708 North 11th Street, Garden City, KS 67846.	Garden City, KS.	NM		1	8	WDD	405300	21800
Kansas City	102-HD012/KS16-Q921-005, Southwest Developmental Services, Inc., 2708 North 11th Street, Garden City, KS 67846.	Liberal, KS	NM		1	10	WDD	506700	27300
Kansas City	102-HD013/KS16-Q921-006, Mental Health Association of Sedgwick County, 430 North Woodlawn, Wichita, KS 67208.	Wichita, KS.	M		1	12	CMI	595500	32700
* Subsubtotal*					4	46		2340000	125200
* State: MO									
Kansas City	084-HD006/MO16-Q921-001, Children's Therapy Center of Pettis Co., Inc., PO Box 1565, Sedalia, MO 65301.	Marshall, MO.	NM			18	WDD	936900	52600
* Subsubtotal*					1	18		936900	52600
* State: NE									

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Omaha	103-HD003/NE26-Q921-002, League of Human Dignity, Inc., 1701 P Street, Lincoln, NE 68508.	Hastings, NE.	NM			7	WPD	334800	19600
* Subsubtotal*					1	7		334800	19600
** Subtotal**					6	71		3611700	197400
** Region: Denver									
* State: CO									
Denver	101-HD002/CO99-Q921-002, United Cerebral Palsy, 2727 Columbine Street, Denver, CO 80205.	Wheat Ridge, CO.	M		1	10	WDD	439700	24200
Denver	101-HD003/CO99-Q921-003, Good Shepherd Lutheran, 445 W Berry, Littleton, CO 80210.	Arapahoe County, CO.	M		1	15	WDD	659500	36200
* Subsubtotal*					2	25		1099200	60400
* State: ND									
Denver	094-HD001/ND99-Q921-001, Dacotah Foundation, 600 So 2nd St., Bismarck, ND 58504.	Bismarck, ND.	M		1	8	CMI	212900	20500
* Subsubtotal*					1	8		212900	20500
** Subtotal**					3	33		1312100	80900
**Region: San Francisco									
*State: AZ									
Phoenix	123-HD003/AZ20-Q921-001, Toby House, Inc., 1202 E. Maryland, Phoenix, AZ 85014.	Phoenix, AZ.	M		1	25	CMI	1179700	69600
* Subsubtotal*					1	25		1179700	69600
*State: CA									
San Francisco	121-HD009/CA39-Q921-003, Mid-Peninsula Housing Coalition, 430 Sherman Avenue, Palo Alto, CA 94306.	San Mateo County, CA.	M		1	20	CMI	1467300	84400
San Francisco	121-HD010/CA39-Q921-004, North Bay Rehabilitation Services, 1113 Second Street, San Rafael, CA 94901.	Kentfield, CA.	M		1	14	WDD	1065200	54900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Los Angeles	122-HD010/CA16-Q921-001, Rehabilitation Institute of So. California, 1800 East La Veta Avenue, Orange, CA 92666.	Orange, CA.	M		1	24	WPD	171300	74800
Los Angeles	122-HD011/CA16-Q921-002, Living Connections, Inc., P.O. Box 10521, Bakersfield, CA 93389.	Bakersfield, CA.	M		1	21	CMI	1453000	80000
Los Angeles	122-HD012/CA16-Q921-003, Valley Village, 17317 Roscoe Blvd., Northridge, CA 91325.	Los Angeles, CA.	M		1	8	WDD	670400	48000
Los Angeles	122-HD013/CA16-Q921-004, Crippled Childrens Society, 7120 Franklin Avenue, Los Angeles, CA 90046.	Riverside, CA.	M		1	25	WPD	1817700	92000
Los Angeles	122-HD014/CA16-Q921-005, Crippled Childrens Society, 7120 Franklin Avenue, Los Angeles, CA 90046.	Los Angeles, CA.	M		1	25	WPD	1817700	92000
Los Angeles	122-HD015/CA16-Q921-006, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Torrance, CA.	M		1	6	WDD	495800	24000
Los Angeles	122-HD016/CA16-Q921-007, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Palmdale, CA.	M		1	6	WDD	495800	24000
Los Angeles	122-HD017/CA16-Q921-008, United Cerebral Palsy, 7630 Gloria Avenue, Van Nuys, CA 91406.	Oxnard, CA.	M		1	6	WDD	495800	24000
Los Angeles	122-HD018/CA16-Q921-009, Los Angeles Retarded Citizens Foundation, 29890 Bouquet Canyon Rd, Saugus, CA 91350.	Saugus, CA.	M		1	8	WDD	361400	24900
* Subsubtotal*					11	163		11853100	623000

* State: HI

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1992 SELECTIONS—Continued

[To accompany HUD 92-68]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contract authority
Honolulu	140-HD001/HI10-Q921-001, Steadfast Housing Corporation, 677 Ala Moana Blvd., Honolulu, HI 96813.	Hilo, HI	NM	5	1	6	CMI	440100	22600
* Subsubtotal*					1	6		440100	22600
* State: NV									
San Francisco	121-HD011/NV39-Q921-001, Accessible Space, Inc., 2550 University Avenue, St. Paul, MN 55101.	Reno, NV	M		1	21	WPD	1251700	67100
* Subsubtotal*					1	21		1251700	67100
** Subtotal**					14	215		14724600	782300
** Region: Seattle									
* State: AK									
Anchorage	176-HD002/AK06-Q921-001, Mat-Su Community Mental Health Services, 230 E. Paulson, Palmer, AK 99654.	Palmer, AK	NM		1	14	WDD	541000	73400
* Subsubtotal*					1	14		541000	73400
*State: OR									
Portland	126-HD003/OR16-Q921-001, Mt. Hood Community Mental Health Center, 400 NE Seventh, Gresham, OR 97030.	Gresham, OR.	M		1	17	CMI	953200	53100
* Subsubtotal*					1	17		953200	53100
* State: WA									
Seattle	174-HD001/WA19-Q921-001, Accessible Space, Inc., 2550 University Ave W, St. Paul, MN 55114.	Spokane, WA.	M		1	21	WPD	1140700	64600
* Subsubtotal*					1	21		1140700	64600
** Subtotal**					3	52		2634900	191100
*** Total***					136	1534		82746700	4751300

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BILLING CODE 4210-27-M

[Docket No. D-93-1038; FR-3545-D-01]

Redelegation of Authority to Approve Refinancings of Bond-financed Section 8 Rental Housing Projects Under the United States Housing Act of 1937, as Amended, to the Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation

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

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are redelegating responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation. Elsewhere in today's Federal Register, the Secretary of Housing and Urban Development delegated responsibility for approval of refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended, to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Donald A. Kaplan, Director, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street SW, room 5136, Washington, DC 20410, (202) 401-0450 (voice) or (202) 708-4504 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice redelegates to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to approve refinancings of bond-financed Section 8 Rental Housing Projects, under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This redelegation does not include the authority to issue rules or regulations or to waive such rules or regulations.

Section A. Redelegation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner hereby redelegate to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation the authority to approve refinancings of bond-financed Section 8 Rental Housing Projects under Section 8(e)(1) of the United States Housing Act of 1937, as amended. This power and authority includes, but is not limited to, the authority to review and approve the financing terms such as the undertaking of any refunding of bonds which financed new construction or substantial rehabilitation of 100 percent assisted or partially assisted Section 8 rental housing and which involves assignment of the Housing Assistance Payments Contract as security for the refinancing bonds.

Section B. Authority Excepted

The following authorities are excepted from this redelegation of authority from the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, and the Director, Office of Evaluation.

1. The authority to issue rules or regulations.
2. The authority to waive rules or regulations.

Section C. Authority To Redelegate

This redelegation of authority does not authorize the Office of Housing—Federal Housing Administration Comptroller, the Deputy Comptroller, or the Director, Office of Evaluation to further redelegate the authority redelegated in Section A of this redelegation of authority.

Authority: Section 8(e)(1) of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437(e)(1); Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93-25358 Filed 10-14-93; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on November 9 and 10, 1993, at 9 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91-081 CV. This meeting is re-scheduled from September 14, 1993, and will include a discussion and development of recommendations on the Trustee Council's draft Restoration Plan and proposed projects for the 1994 Annual Work Plan. Officers will be elected for the upcoming year.

Dated: October 9, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93-25381 Filed 10-14-93; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[NV-930-4210-05; N-43253]

Partial Termination of Recreation and Public Purposes Classification and Opening Order, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes Classification in part and provides for opening the affected lands to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785-6530.

SUMMARY: On May 16, 1986, a Notice of Realty Action (NORA) was published in the **Federal Register** (51 FR 18046) identifying several parcels of public land that the State of Nevada had applied for under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4).

Upon publication of the NORA in the **Federal Register**, the following described land became segregated from appropriation under the public land laws and the general mining laws; the classification became effective 60 days thereafter:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 4, lots 2, 3, NE¼SW¼, S½S½;
Sec. 8, NE¼NE¼, S½NE¼, E½SE¼SW¼, SE¼;
Secs. 10 and 16, all.

The lands in secs. 4, 8 and 16 were classified on Bureau motion; the segregation and classification on these lands terminated automatically on November 16, 1987. On that date the lands returned to their former public land status.

A lease was subsequently issued and remains in effect for a portion of the land in sec. 10.

Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, the aforementioned Recreation and Public Purposes classification is hereby terminated as it affects the following described land which was not included in the aforementioned lease:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 10, lot 1, SE¼SE¼NE¼SW¼, E½E½SE¼SW¼, S½SW¼NW¼SE¼, SW¼SE¼.

The area described contains 98.90 acres.

At 10 a.m. on November 15, 1993 the above described 98.90 acres will become open to the operation of the public land laws generally, subject to existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

At 10 a.m. on November 15, 1993 the 98.90 acres will become open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The 98.90 acres have been and will remain open to the operation of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4), and to leasing under the mineral leasing laws.

K. Lynn Bennett,
Acting State Director, Nevada.

[FR Doc. 93–25351 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[CA–065–04–4333–05]

Closure Order for Motorized Vehicle Use, BLM Route P64, Tuber Canyon, Panamint Mountains, Inyo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure on BLM Route P64 in Tuber Canyon, Panamint Mountains in Inyo County, California.

SUMMARY: Notice is hereby given that BLM Route P64 is closed to motorized vehicle use within Tuber Canyon.

ORDER: Effective October 15, 1993 the public lands from a point ½ mile east of the intersection of BLM Routes P63 and P64 to the boundary of Death Valley National Monument, in Sectors 1, 2, 3, 9, 10, 11 and 12, Township 20 South, Range 44 East, Mount Diablo Meridian, are closed to all motorized vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in this area.

Exemptions to this order are granted to law enforcement and other emergency vehicles in the course of official duties. Exemptions to this order for reasonable access for mining or other purposes are by written authorization of the Ridgecrest Resource Area Manager only.

EFFECTIVE DATE: This closure is effective October 15, 1993 and will remain in effect until rescinded by the authorizing official.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, CA 93555, (619) 375–7125.

SUPPLEMENTARY INFORMATION: The purpose of this closure order in Tuber Canyon is to provide protection for riparian and wildlife values from motorized vehicle impacts. The canyon will remain open for hiking, equestrian and other non-motorized uses.

Maps showing the affected area are available by contacting the Ridgecrest Resource Area Office. A gate will be erected at the closure point and the affected area will be posted with public notices and standard motorized vehicle closure signs.

Authority for this closure is found in 43 CFR 8364.1. Violation of this order is punishable by a fine, not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: October 5, 1993.

Richard E. Fagan,
District Manager.

[FR Doc. 93–25390 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–020–4333–05]

Motor Vehicle Use Restrictions; Humboldt County, NV

AGENCY: Bureau of Land Management, Interior

ACTION: Humboldt County, Nevada; vehicle limitations and supplemental rules.

1. Notice is hereby given that motorized vehicle use in the Water Canyon Watershed is limited to the following areas:

(a) The main road along the bottom of Water Canyon approximately 1.3 miles from the entrance to public lands. Above this point motorized travel will only be allowed from approximately June 1 through October 31 of each year on either the main canyon road up the left fork, or the main road up the right fork;

(b) Designated parking and picnic areas;

(c) The road leading out of the canyon to the east, leaving the main Water Canyon road near the southwest corner of the SW ¼ of the NE ¼ of section 12 Township 35 N Range 38 E MDBM. This road is known as the "ridge road";

(d) The roads at the mouth of Water Canyon heading north and south from the intersection near the southwest corner of the SW ¼ of the SW ¼ of section 2 Township 35 N Range 38 E MDBM.

This order affects all public lands within the watershed in the following sections:

Sections 1, 2, 11, 12, 13, Township 35 N Range 38 E MDBM;

Sections 7, 17, 18, 19, 20, Township 35 N, Range 39 E MDBM only public lands within the Water Canyon watershed are affected by this rule.

Motorized vehicle access in the watershed outside the areas or time periods listed above will be only for administrative or emergency vehicles, or by written authorization from the Area

Manager of the Sonoma-Gerlach Resource Area. This order does not affect snowmobile use during periods of heavy snow cover. The purpose of this order is to reduce soil compaction and soil erosion, protect vegetation within the watershed, and protect water quality and road surfaces.

The authority for this order is 43 CFR 8341.2. The order will take effect on November 1, 1993 and will remain in effect until Water Canyon Management Plan is completed and the off-highway vehicle designations identified in the plan are implemented.

2. Notice is hereby given that two supplemental rules will take effect November 15, 1993.

(a) Use of firearms is prohibited within 300 feet of the open portion of the main road along the bottom of Water Canyon, except for upland game and deer hunting during established seasons. All state and local firearms laws still apply.

(b) Camping or other overnight stay within the watershed is limited to three (3) nights in a sixty (60) day period. The 60 day period begins with the first night of occupancy. After 3 days have passed, campers must move a minimum of a 10 mile radius from the previous campsite, or onto non-BLM administered land. Longer stays within the watershed are permitted if written authorization is obtained from the Sonoma-Gerlach Area Manager, or for authorized caretakers or BLM personnel as needed for administrative purposes.

This order affects all public lands within the watershed in the following sections:

Sections 1, 2, 11, 12, 13, Township 35 N Range 38 E MDBM;
Sections 7, 17, 18, 19, 20, Township 35 N, Range 39 E MDBM

Only public lands within the Water Canyon watershed are affected by this rule. The purpose of these supplemental rules is to reduce vandalism and adverse impacts from long-term camping within the watershed.

The authority for this order is 43 CFR 8365.1–6. These rules will remain in effect until the Water Canyon Management Plan is completed and the use regulations identified in the plan are implemented. Comments or requested for authorizations under these rules will be received by: Area Manager, Bureau of Land Management, Sonoma Gerlach Resource Area, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–1500.

Dated: October 6, 1993.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 93–25357 Filed 10–14–93; 8:45 am]

BILLING CODE 4310-HC-M

[CO-920-04-4110-03; COC46735]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC46735, Garfield County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from April 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: October 4, 1993.

Janet Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93–25352 Filed 10–14–93; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-4110-03; NMNM 90590]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90590, Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dated: October 7, 1993.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 93–25350 Filed 10–14–93; 8:45 am]

BILLING CODE 4310-FB-M

[MT-070-4210-05; MTM81959]

Realty Action; Recreation and Public Purposes Act Classification; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Amendment of notice of reality action for MTM81959, recreation and public purposes classification in Beaverhead County.

SUMMARY: This Notice amends the original notice of reality action for MTM81959 published on September 10, 1993 (Vol. 58, No. 174 page 47752) to include the following tract for classification for lease or conveyance to the State of Montana under the provisions of the Recreational and Public Purposes Act. The State of Montana proposes to use the lands for inclusion into the Bannack State Park and Historical Area.

Principal Meridian Montana

T. 8 S., R. 11 W.,
Sec. 7, Lot 9.
Containing .00 acre.

This land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease or patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. The lands will be conveyed subject to all valid, existing rights (e.g., rights-of-way, easements and leases of record).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Dillon Resource Area, 1005 Selway Drive, Dillon, Montana.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Butte District Office, 106 North Parkmont, Box 3388, Butte, Montana 59702–3388.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a State Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM follows proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a State Park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388.

Dated: October 5, 1993.

James R. Owings,

District Manager.

[FR Doc. 93–25354 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–DN–M

[4210–05; WIES 041898]

Realty Action; Sale of Public Land in Burnett County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Burnett County, Wisconsin—modified competitive method.

SUMMARY: The following public land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), at not less than the estimated fair market value (FMV) of $26,000. The public land will not be offered for sale for at least 60 days following the date of this notice. The public land is described as follows.

WIES–041898

T. 40N., R.16W., Sec. 34, Lot #1, 4th P.M., Oakland Township, Burnett County, Wisconsin (containing 0.54 acres);

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

The public land will be offered for sale at a public auction beginning at 10 a.m., CST, on December 21, 1993 at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. This sale will be modified by competitive procedures. Mr. Dell R. and Joanne Ruedy will be given the opportunity to meet the highest bid received at public auction. Sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Milwaukee District Office at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, no later than 3 p.m. CST on December 20, 1993. Bid envelopes must be marked on the left front corner with WIES–041898 and December 21, 1993. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior, BLM for not less than 10 percent of the amount bid ($2,600 minimum).

The terms and conditions applicable to the sale are:

(1) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Milwaukee District Office.

(2) There is no legal access to the parcel because it is landlocked by the adjacent parcels to the north and west. There is physical access to the parcel by boat and a road through a portion of Kulbeck Park on the north side of the parcel.

Federal law requires that all bidders must be U.S. citizens, 18 years or older, or in the case to corporations, be subject to the laws of any state of the United States. Proof of these requirements must accompany the bid.

Under modified competitive procedures, an apparent high bid will be declared at public auction. The apparent high bidder and the designated bidder (Mr. Dell R. Ruedy) will be notified. The designated bidder shall have fifteen (15) days from the date of notification to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared high bidder. The total purchase price for the land shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, planning and environmental documents, are available at the Milwaukee District Office.

DATES: Until November 15, 1993, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number 414–297–4413.

Dated: October 6, 1993.

Chris Hanson,

Acting District Manager.

[FR Doc. 93–25392 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–040–04–4140–03]

Tract Designs for Proposed Sodium Lease Sale, Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for submittal of tract designs for proposed competitive sodium lease sale, Sweetwater County.

SUMMARY: In preparation for a sodium lease sale in late 1994 or early 1995, the Rock Springs District Office has begun the initial planning and designing of lease tracts which are developable, desirable, and logical is of the utmost importance during the preleasing process. The lands to be included in suggested tract designs are all those lands for which expressions of interest have been submitted.

DATES: Suggested tract designs should be submitted by November 5, 1993.

ADDRESSES: Suggested tract designs should be submitted to Ted Murphy, Chief, Branch of Solids, Mineral Resources, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Chief, Branch of Solids, at (307) 382–5350.

SUPPLEMENTARY INFORMATION: During the tract design phase, we are requesting submittal of tract designs which meet the referenced requirements for leasing. The maximum allowable acreage in any one sodium lease is 2,560 acres. The lands to be included in suggested tract designs are all those lands for which expressions of interest have been submitted and are described as follows:

T. 15 N., R. 108 W., 6th P.M., WY,
Sec. 6: Lots 1 thru 7, S2NE, SENW, E2SW, SE (629.52 ac.);
Sec. 8: All (640.00 ac.).
T. 17 N., R. 108 W., 6th P.M., WY,
Sec. 6: Lots 8 thru 14, S2NE, SENW, E2SW, SE (633.82 ac.);
Sec. 8: All (640.00 ac.);
Sec. 18: Lots 5 thru 8, E2W2, E2 (636.56 ac.);
Sec. 20: All (640.00 ac.);
Sec. 28: All (640.00 ac.);
Sec. 30: Lots 5 thru 8, E2W2, E2(638.80 ac.);
Sec. 34: All (640.00 ac.);
T. 17 N., R. 109 W., 6th P.M., WY,
Sec. 12: Lots 1, 4 thru 6, 8 thru 10, WS, SWSE (401.63 ac.);
Sec. 14: All (640.00 ac.);
Sec. 20: All (640.00 ac.);
Sec. 22: All (640.00 ac.);
Sec. 24: Lots 1 thru 16 (553.60 ac.);
Sec. 26: All (640.00 ac.);
Sec. 28: All (640.00 ac.).

John S. McKee,
Associate District Manager.

[FR Doc. 93–25345 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–22–M

[NV–055–93–4350–09]

Proposed Supplementary Rules for Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Proposed supplementary rules for certain public lands known as Ash Springs located in the unincorporated town of Ash Springs along U.S. Highway 93, Las Vegas District, Lincoln County, Nevada.

SUMMARY: The proposed supplementary rules are necessary for the management of activities on public land at Ash Springs, Lincoln County, Nevada. These proposed supplementary rules would be limited to activities occurring within the following area, hereafter referred to as Ash Springs.

Mount Diablo Meridian

T. 6 S., R. 61 E.,
Section 6 NW¼, NW¼

DATES: Comments must be submitted by November 15, 1993.

ADDRESSES: Interested parties may submit comments on the proposed supplementary rules to Curtis G. Tucker, Area Manager, Caliente Resource Area Office, P.O. Box 237, Caliente, NV 89008.

FOR FURTHER INFORMATION CONTACT: Kyle Teel, Wildlife Biologist, Caliente Resource Area, P.O. Box 237, Caliente, NV 89008. Telephone: (702) 726–8100.

SUPPLEMENTARY INFORMATION: Ash Springs contains the White River Springfish (*Crenichthys baileyi baileyi*) a Federally listed endangered species. A Coordinated Resource Management Plan was developed for the area; one of the planned actions was to establish rules to restrict certain activities to protect the fish species.

1. The following actions are prohibited, within Ash Springs:

A. Overnight Camping. "Camping" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

B. Occupancy or use of Ash Springs by any individual, or any group, is limited to 2 hours during any 24 hour period.

C. Introducing wildlife, fish, or plants, including their reproductive bodies, into Ash Springs, except when authorized by the District Manger.

D. Collecting wood or other plant material for use in a campfire or any other purpose.

E. Taking of baths, washing dishes or animals, or the introduction of any detergents, soaps, toxic materials into the water.

F. Operating a motorized vehicle off of designated roads, trails, or parking area. Designation shall be marked by the posting of appropriate signs or markers, or by the erection of physical barriers, or both.

2. Violation of any of these proposed supplementary rules is punishable by a fine not to exceed $100,000 ($200,000 if the violator is an organization), imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy and Management Act (Pub. L. 94–579) as amended at 18 U.S.C. 3571 (b)(s).

Dated: October 1, 1993.

Billy R. Templeton,
State Director.

[FR Doc. 93–25355 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., October 5, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 24, Township 12 South, Range 32 East, Boise Meridian, Idaho, Group No. 867, was accepted October 1, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

October 5, 1993.

Gary T. Oviatt,
Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–25386 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–GG–M

[CO–930–4214–10; COC–39308]

Amendment to Proposed Withdrawal; Opportunity for Public Meeting; Colorado

October 5, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to amend their application for the Keystone Ski Area withdrawal to include an additional .68 acre parcel of National Forest System land which was omitted from the original application. This notice closes this land to location and entry under the mining laws for up to two years.

DATES: Comments or requests for public meeting must be received on or before January 13, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303/239–3706.

SUPPLEMENTARY INFORMATION: On September 23, 1993, the Department of Agriculture, Forest Service, filed an amendment to their application to include a .68 acre parcel which was inadvertently omitted from the original application (FR Doc. 92–23823) published in the **Federal Register** on October 1, 1992, appearing on pages 45395 and 45396). The original application is hereby amended to include lots 19 and 22, sec. 19, T. 5 S., R. 76 W., Sixth Principal Meridian.

The amended area described aggregates .68 acres in Summit County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this amendment may present their views in writing to the Colorado State Director.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–25346 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended [U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and threatened species (50 CFR parts 17 and 18).

Applicant: California Department of Fish and Game, Office of Oil Spill Prevention and Response File no. PRT–782423

Type of Permit: Take for scientific research

Name and Number of Animals: Southern Sea Otter (*Enhydra lutris nereis*): capture of up to 30 animals to obtain 14 sub-adult or adult males each weighing over 25 pounds.

Summary of Activity to be Authorized: Sea otters will be captured and placed in pet kennels and transported to a mobile veterinary clinic. They will then be tranquilized, tagged, implanted subdermally with a transponder chip and have 60 ml of blood collected.

Source of Marine Mammals for Research: Monterey Bay, California

Period of Activity: From September through December, 1993.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, c/o Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420(c), Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Dated: October 8, 1993.

Joan Canfield,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–25301 Filed 10–14–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of the Threatened Desert Tortoise, by Nevada Division of State Parks, Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advise the public that the Nevada Division of State Parks (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–781039. The requested permit would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*) in Valley of Fire State Park, Clark County, Nevada. The proposed incidental take would occur as a result of road reconstruction in desert tortoise habitat.

The Service also announces the availability of an environmental assessment (EA) for the proposed issuance of the incidental take permit. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before November 15, 1993.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. David Harlow, Field Supervisor, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, room 125, Reno, NV 89502. Please refer to permit number PRT–781039 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Maley, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, room 125, Reno, NV 89502 (702–784–5227). Individuals wishing copies of the application or EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Under section 9 of the Act, "taking" of the desert tortoise, a threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement of Habitat Conservation Plan (HCP) for the desert tortoise that will allow reconstruction of a road in Valley of Fire State Park, Clark County, Nevada. The permit will authorize the incidental take of up to 10 desert tortoises, and be in affect for a term of 5 years. The application includes an HCP and Implementation Agreement.

Reconstruction of the road would disturb 16.58 acres of low- to moderate-density desert tortoise habitat along an existing dirt road that has been deteriorated by weather. The Applicant estimates that this proposed disturbance of desert tortoise habitat could result in a maximum incidental take of 10 desert tortoises.

To minimize incidental take of desert tortoises, the Applicant proposes: (1) Pre-construction desert tortoise surveys and various modifications of construction activities to minimize tortoise mortality, and (2) to post and enforce a 25 mph speed limit for the entire section of reconstructed roadway as long as the road is open for public use. The Applicant proposes to mitigate for the incidental take by: (1) Improving desert tortoise habitat in Lake Mead National Recreation Area by providing $5803.00 to the National Park Service for removal of feral burros in accordance

with their burro management program, and (2) developing a brochure and permanent narrative and graphic display on the desert tortoise in the Valley of Fire State Park's visitor center to enhance the public's knowledge of the desert tortoise. Under the HCP, the National Park Service will continue managing the burro population in Lake Mead National Recreation Area according to their burro management program after the initial removal of burros.

The EA considers the environmental consequences of four alternatives, including the proposed action and the no-action alternatives. The proposed action would allow the reconstruction of the road, the loss of 16.58 acres of desert tortoise habitat, and the incidental take of up to 10 desert tortoises. The proposed action would result in minimization of incidental take by modification of construction activities and establishment of a speed limit when the road is open for public travel. Mitigation under the proposed action would enhance desert tortoise habitat on Lake Mead National Recreation Area, and benefit public education by creation of a public display and informational brochure. Under the no-action alternative, the road reconstruction would not occur and the permit would not be issued. If road reconstruction does not occur, public access to the area would continue to be restricted, the existing dirt road would continue to be used by off-highway vehicles and exposed to human impact that have been shown to adversely affect desert tortoises. In addition, the proposed funding for tortoise habitat enhancement through burro removal, and the proposed public education facilities would not be available. A third alternative is to develop a hiking trail instead of the road. The fourth alternative is to relocate tortoises from the project site to other areas of the park.

Dated: October 8, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93-25306 Filed 10-14-93; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Cancellation of the Outer Continental Shelf Advisory Board Scientific Committee Meeting

This notice is issued to cancel the Outer Continental Shelf Advisory Board Scientific Committee meeting scheduled for October 20-21, 1993, at the Marriott Suites at Worldgate. The meeting had previously been announced in the **Federal Register** on September 23, 1993.

For more information, contact Thomas Gernhofer, Associate Director for Offshore Minerals Management at 202-208-3504.

Dated: October 8, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93-25362 Filed 10-14-93; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336-8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, room 3201, Washington, DC 20503; (202) 395-7340.

Summary of Form Under Review

Type of Request: New Form.

Title: Self Monitoring Questionnaire.

Form Number: OPIC 162.

Frequency of Use: Annually.

Type of Respondents: Businesses or other individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies assisted by OPIC.

Reporting Hours: Two hours per form.

Number of Responses: 125 per year.

Federal Cost: $2,031.25.

Authority for Information Collection: Section 231(k)2 of the Foreign Assistance Act of 1961 (as amended).

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The Questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: October 5, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93-25275 Filed 10-14-93; 8:45 am]

BILLING CODE 3210-01-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, Room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6212. Comments on the following assessment are due 15 days after the date of availability:

No. AB-290 (Sub-No. 121X), Camp Lajeune RR. Co.—Abandonment—Between Marine Jct. and Kellum, North Carolina. EA available October 12, 1993.

Comments on the following assessment are due 30 days after the date of availability:

AB-55 (Sub-No. 472), CSX Transportation, Inc.—Abandonment—in Barbour, Randolph, Pocahontas and

Webster Counties, West Virginia. EA available October 3, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25336 Filed 10-14-93; 8:45 am]

BILLING CODE 7035-01-P

[Ex Parte No. 394 (Sub-No. 13)]

Cost Ratio For Recyclables—1994 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Establishment of rate caps and initiation of third annual compliance proceeding.

SUMMARY: The Commission has calculated proposed 1994 revenue-to-variable cost (R/VC) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The R/VC ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). Because URCS develops different variability percentages for different railroads, the final rules adopted at 49 CFR part 1145, in Ex Parte 394 (Sub-No. 3), Cost Ratios for Recyclables—Compliance Procedures, 9 I.C.C.2d 182 (1991), allow separate R/VC ratio ceilings for individual railroads to apply in the context of monitoring compliance. The proposed national average R/VC ratio is 141.0%. Individual and regional R/VC ratios are proposed. In addition, the Commission is initiating the third annual compliance proceeding in accordance with rules adopted in Ex Parte No. 394 (Sub-No. 3), *supra*, including the schedule for completing the proceeding.

EFFECTIVE DATE: November 4, 1993, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 927-6395; or W.C. Walston, (202) 927-6221. TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

This decision will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have an adverse economic impact on a substantial number of small entities. Our decision simply reports the results of a mechanical calculation that serves as a ceiling for recyclables rates. No new regulatory requirements are imposed, directly or indirectly, on small entities. The economic impact on small entities is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321(a), 10731, 5 U.S.C. 553.

Decided: September 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25475 Filed 10-14-93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32347]

Hardin Southern Railroad; Acquisition and Operation Exemption; Line of J and J Railroad

Hardin Southern Railroad, Inc., a non-carrier, has filed a notice of exemption to acquire and operate approximately 8.34 miles of rail line owned by J and J Railroad, Inc. in Marshall and Calloway Counties, KY. The line extends generally between milepost 30.0 and milepost 38.34, beginning at the north edge of the City of Murray, KY, and continuing northward generally following the Clarks River, terminating at Hardin, KY. This exemption became effective on September 23, 1993.[1]

Any comments must be filed with the Commission and served on: Francis G. McKenna, Esq., Anderson and Pendleton, P.O. Box 65891, Washington, DC 20035.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 22, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25340 Filed 10-14-93; 8:45 am]

BILLING CODE 7035-01-M

[1] Applicant states that the parties intend to convey the line on October 1, 1993.

[Finance Docket No. 32360]

Southern Pacific Transportation Co.; Trackage Rights Exemption; Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for an additional 120 days its grant of trackage rights to Southern Pacific Transportation Company (SPT), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7), a distance of approximately 4.7 miles.[1] The extension of the trackage rights was to become effective on or after October 1, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: October 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25338 Filed 10-14-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 458X]

CSX Transportation, Inc.; Abandonment Exemption; Barbour County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX

[1] SPT and JPB own parallel lines between these points. They agreed to grant limited term trackage rights to each other while they studied the feasibility of coordinated use of the lines to achieve more efficient freight, intercity passenger, and commuter rail operations in this area. See previous notices of exemption in Finance Docket Nos. 32091 and 32094 and extensions of these exemptions in Finance Docket Nos. 32159, 32161, 32200, 32202, 32300, and 32303. This further extension is necessary because the parties have not yet completed their negotiations. SPT has agreed to grant JPB a similar trackage rights extension in Finance Docket No. 32359.

Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–10904, to permit CSXT to abandon a 9.73-mile segment of its Berryburg Subdivision, between milepost 2.6, near Berryburg, and milepost 12.33, at the line's terminus at Overfield, in Barbour County, WV, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 16, 1993. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 25, 1993, petitions to stay must be filed by November 1, 1993, and petitions for reconsideration must be filed by November 9, 1993. Requests for a public use condition must be filed by November 4, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 458X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) petitioner's representative, Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 24, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25339 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–43; Sub-No. 159X]

Illinois Central Railroad Co. Abandonment Exemption; in Jefferson Davis and Lawrence Counties, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 20.9 miles of rail line, known as the Bassfield-Silver Creek Line, between milepost 32.1 near Bassfield and milepost 53 near Silver Creek, in Jefferson Davis and Lawrence Counties, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal compliant filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice no governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 14, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by October 25, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 4, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by October 20, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25337 Filed 10–14–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 93–50]

Johnson Matthey, Inc., West Deptford, NJ; Cancellation of Hearing

Due to the withdrawal of the request for hearing by Knoll Pharmaceutical Co., the hearing regarding the application for Johnson Matthey, Inc., for registration as a bulk manufacturer of the Schedule II controlled substances hydromorphone, set to commence on November 2, 1993, at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Arlington, Virginia, is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–8188.

Dated: October 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-25278 Filed 10-14-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standard Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
- FL930087 (Oct. 15, 1993)
- FL930088 (Oct. 15, 1993)
- FL930089 (Oct. 15, 1993)
- FL930090 (Oct. 15, 1993)
- FL930091 (Oct. 15, 1993)

Tennessee
- TN930047 (Oct. 15, 1993)

Volume II

Arkansas
- AR930030 (Oct. 15, 1993)
- AR930031 (Oct. 15, 1993)
- AR930032 (Oct. 15, 1993)
- AR930033 (Oct. 15, 1993)
- AR930034 (Oct. 15, 1993)
- AR930035 (Oct. 15, 1993)
- AR930036 (Oct. 15, 1993)
- AR930037 (Oct. 15, 1993)
- AR930038 (Oct. 15, 1993)
- AR930039 (Oct. 15, 1993)
- AR930040 (Oct. 15, 1993)
- AR930041 (Oct. 15, 1993)
- AR930042 (Oct. 15, 1993)
- AR930043 (Oct. 15, 1993)

Kansas
- KS930030 (Oct. 15, 1993)
- KS930031 (Oct. 15, 1993)
- KS930032 (Oct. 15, 1993)
- KS930033 (Oct. 15, 1993)
- KS930034 (Oct. 15, 1993)
- KS930035 (Oct. 15, 1993)
- KS930036 (Oct. 15, 1993)
- KS930037 (Oct. 15, 1993)
- KS930038 (Oct. 15, 1993)
- KS930039 (Oct. 15, 1993)

Louisiana
- LA930049 (Oct. 15, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
- FL930063 (Oct. 8, 1993)
- FL930066 (Oct. 8, 1993)

Mississippi
- MS930022 (Feb. 19, 1993)

New Hampshire
- NH930002 (Feb. 19, 1993)

New York
- NY930003 (Feb. 19, 1993)
- NY930005 (Feb. 19, 1993)
- NY930006 (Feb. 19, 1993)
- NY930011 (Feb. 19, 1993)
- NY930014 (Feb. 19, 1993)
- NY930015 (Feb. 19, 1993)
- NY930017 (Feb. 19, 1993)
- NY930018 (Feb. 19, 1993)
- NY930020 (Feb. 19, 1993)
- NY930021 (Feb. 19, 1993)
- NY930025 (Feb. 19, 1993)
- NY930026 (Feb. 19, 1993)

Pennsylvania
- PA930005 (Feb. 19, 1993)
- PA930006 (Feb. 19, 1993)
- PA930025 (Feb. 19, 1993)
- PA930030 (Feb. 19, 1993)
- PA930031 (Feb. 19, 1993)

Vermont
- VT930024 (Aug. 20, 1993)

Volume II

Illinois
- IL930017 (Feb. 19, 1993)

Indiana
- IN930002 (Feb. 19, 1993)
- IN930006 (Feb. 19, 1993)

Michigan
- MI930012 (Feb. 19, 1993)
- MI930041 (Oct. 1, 1993)
- MI930053 (Oct. 1, 1993)

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of October 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-25218 Filed 10-14-93; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-73; Exemption Application No. D-9152, et al.]

Grant of Individual Exemptions; IDS Financial Corp. (IDS), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) They are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

IDS Financial Corporation (IDS) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 93-73; Exemption Application No. D-9152]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the guarantee against loss (the Guarantee) by IDS or its affiliates (together, the Applicants) of money invested with the Applicants by employee benefit plans (the Plans), provided: (a) The fees paid by the Plans to the Applicants for the Guarantees are not more than reasonable compensation for such Guarantees; (b) the decision to purchase the Guarantees will be made for each Plan by a Plan fiduciary who is independent of the Applicants; (c) the individually managed portfolios and collective investment funds that will be subject to the Guarantee will be invested in products whose prices are quoted daily and thus can be objectively valued; and (d) all terms and conditions of the Guarantee will be fully disclosed in a written document which will be distributed to any Plan investing in the Guarantee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 4, 1993 at 58 FR 41496.

WRITTEN COMMENTS: The Department received one written comment with respect to the proposed exemption. The comment was submitted by the Applicants to clarify two representations that appeared in the notice of proposed exemption. In representation 6 of the proposed exemption, the current fee structure of IDS Bank & Trust (IDS Bank)'s collective investment trusts was described. The Applicants stated in their comment that

the level and amount of those fees reflects IDS Bank's current structure; the fees may change in the future. In addition, the Applicants stated that representation 10 describes the initial estimates of fees for the Guarantee. These fees were by way of illustration and have not been finalized by IDS. The Applicants represent that any fees, once finalized, will be based on a percentage of assets under management. Any increase in the percentage amount of such fees must be approved by an independent fiduciary for the investing Plan.

Upon consideration of the entire record, the Department has determined to finalize the exemption as modified by the above-described comment.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

ALLTEL Corporation (ALLTEL), ALLTEL Corporation Pension Plan and Trust (the ALLTEL Pension Plan), ALLTEL Corporation Profit-Sharing Plan and Trust (the ALLTEL Profit-Sharing Plan), Allied Telephone Company Profit-Sharing Plan (the Allied Profit-Sharing Plan), Profit-Sharing Plan for Employees of Systematics, Inc. (the Systematics Profit-Sharing Plan), SLT Communication, Inc. Retirement Plan and Trust (the SLT Retirement Plan; Collectively, the Plans) Located in Little Rock, AR

[Prohibited Transaction Exemption 93–74; Application Nos. D–9362, D–9363, D9364, D–9365, D–9366]

Exemption

The restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the consolidation of certain assets of the Plans into a new master trust sponsored by ALLTEL (the Master Trust) provided that the following conditions are satisfied: (a) The fair market value of the assets of each Plan shall upon completion of the transfer to the Master Trust equal the fair market value of said assets immediately preceding the transfer, (b) other than cash, only assets which are traded on a recognized securities exchange will be subject to the proposed transaction, and (c) the Plans' trustee will not receive any fees or commissions for making the transfers from the individual Plans to the Master Trust.

Comments

In the Notice of Proposed Exemption, the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 3, 1993. The Department received telephone comments from several interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction involves the consolidation of plan investments and will have no effect upon benefits.

The Department received a total of 116 written comments with 28 of those comments also containing a request for a hearing.[1] Three commentators were opposed to the exemption but raised issues which are not relevant to the exemption. Twenty-seven of the comments were in opposition to the exemption but the commentators failed to raise any specific objections to which the applicant or the Department could respond. One commentator expressed concern about the impact of the exemption on his retirement benefits but did not specifically object to the exemption. Two commentators expressed concern that the establishment of a master trust would cause an impermissible commingling of the funds of the five Plans. A group of 82 commentators wrote to voice their objection to the proposed exemption. This group of commentators expressed concern that any merger or consolidation of the Plans would cause people to lose their jobs and possibly forfeit their retirement benefits. In addition, one individual objected to the proposed exemption stating that the creation of the Master Trust would cause the Plans' participants and beneficiaries to lose control over the investment of their retirement plan accounts. Finally, one commentator stated that he was in favor of the exemption as long as his retirement benefits would not be threatened.

The applicant was asked to address the above concerns. With respect to the concerns regarding commingling of the funds, the applicant represents that the assets of the five Plans will be held together in the Master Trust for investment purposes only and that each individual Plan's assets will be available only to pay the benefits of the participants and beneficiaries of that individual Plan. The applicant also noted that the Master Trust provides for separate accounting of each Plan's interest in the Master Trust. With respect to the comments regarding the possibility of employees losing jobs or retirement benefits as a result of the merger or consolidation of the Plans, the applicant responds by explaining that the creation of the Master Trust for investment purposes has no bearing on whether the Plans will be merged or terminated or whether any benefits will be forfeited. In response to the comment regarding the ability of participants to direct the investment of their accounts, the applicant represents that the participants currently have a very limited ability to direct the investment of their accounts and that the participants will continue to have the same rights under the Master Trust.

Since only 1 of the 28 requests for a hearing contained any concrete objection to the exemption, which objection was adequately responded to by the applicant (see the discussion regarding the commingling of plan assets above), the Department has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 20, 1993, at 58 FR 38791.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[1] Because the relief provided by the exemption includes section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of October, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93-25382 Filed 10-14-93; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-9341]

Notice of Proposed Exemption for Certain Transactions Involving the Prudential Insurance Company of America (Prudential) Located in Newark, NJ

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by Prudential, including the Prudential general account and the general accounts of Prudential's affiliates which are licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which Prudential is a fiduciary. As an acknowledged investment manager and fiduciary, Prudential is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

EFFECTIVE DATE: If granted, this proposed exemption would be effective for transactions occurring on or after December 20, 1988.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 14, 1993.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-9341. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Prudential pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and subject to supervision and examination by the Insurance Commissioner of the State of New Jersey. It is the largest life insurance company in the United States. Among the variety of insurance products and services it offers, Prudential provides funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. Prudential maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. The ERISA-Covered Accounts, Prudential's general account (which includes all of Prudential's assets invested on behalf of its policyholders not participating in separate accounts), the general accounts of one or more of Prudential's affiliates which are insurance companies licensed to do business in at least one of the fifty states, accounts maintained by Prudential for foreign pension plans and other "non-ERISA" investors, and accounts which Prudential may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract investors. In many cases, Prudential's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. The sharing of large or uniquely desirable real estate investments would permit the ERISA-Covered Accounts to participate in more attractive and profitable real estate investments while maintaining portfolio diversification.

3. The real estate investments which Prudential proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. Prudential's investments in joint venture partnerships frequently include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnership which are secured by the joint venture's interest in its real property. Frequently, Prudential, on

behalf of its Accounts, will own 50 percent of the joint venture partnership and provide 100 percent of the debt financing. Prudential anticipates that real estate investments will be allocated to each Account maintained by Prudential in the same proportions of debt and equity. No ERISA-Covered Account will participate in an investment for the purpose of enabling another Account to make an investment.

4. Real estate equity investment opportunities for the Accounts are originated by an affiliate of Prudential. The Acquisitions and Sales Group of the Prudential Investment Corporation (PIC), a wholly-owned subsidiary of Prudential, originates equity investments in existing properties. The Development and Retail Investment Unit of PIC originates real estate developmental properties. Real estate equity investments are originated in accordance with general investment criteria developed by The Prudential Property Corporation, Inc. (PPC), a wholly-owned subsidiary of PIC, and the Portfolio Management Group of the Prudential Realty Group. The Prudential Realty Group is composed of PPC, certain divisions within PIC, and the Prudential Mortgage Capital Company, Inc., a Prudential affiliate which originates mortgages and other real estate debt investments. The specific investment criteria for each Account (other than the General Account) must be approved by the Investment Committee of the Institutional Investment Management Unit (the IIM) of the Prudential Realty Group and updated no less frequently than annually. The IIM was formerly a part of the Prudential Realty Group but has now been aligned with other asset management business units of Prudential. With respect to single customer ERISA-Covered Accounts, the investment strategy is developed with the plan contractholder and is also approved by the Investment Committee of the IIM. General Account realty is managed by the Equity Investments Unit of the Prudential Realty Group. Prudential continues to be the investment manager for each of the Accounts.

5. General investment criteria for each ERISA-Covered Account are set forth in the separate account contract between Prudential and the plan contractholder. Each ERISA-Covered Account has a portfolio manager, who annually reviews and revises more detailed criteria consistent with the current investment strategy of the particular Account, within the general limits established by the contract. This review and revision is subject to the approval of the IIM Investment Committee. A similar process is followed to set investment criteria for non-ERISA Covered Accounts.

Determinations of whether a particular investment opportunity is suitable for sharing are made by the chief executive officer of the IIM before the opportunity is allocated. This determination is made on the basis of the size of the investment compared to the investment criteria and acquisition budget of the IIM-managed Accounts. Under Prudential's allocation procedures, if an investment opportunity meets the investment criteria for an Account that has sufficient assets to acquire the investment in its entirety, the investment opportunity will be allocated to that Account. However, if a real estate investment opportunity meets the current investment criteria (other than size of the investment) for more than one Account but no Account has sufficient assets available to acquire the entire investment, the chief executive officer of the IIM may determine that the investment should be shared. Each Account has a portfolio manager who makes recommendations to the IIM Investment Committee regarding the suitability of an investment (including an interest in a shared investment) for the Account. Allocation determinations are based on, among other things, the extent to which the Account's projected acquisition needs and investment objectives, established no less frequently than annually as part of the criteria for investment of the Account, have not been satisfied by other allocations. Under the proposed exemption, investments meeting an Account's investment criteria could be shared by that Account and one or more other Accounts for which a share in the investment meets the criteria of such other Account[s] necessary to achieve economic, geographical and property class diversification within the restraints on investment size imposed by the financial constraints of that Account [or Accounts]. The final allocations are made by the IIM Investment Committee in accordance with Prudential's allocation procedures. Prudential's allocation procedures provide for the allocation of each real estate investment opportunity to one or more Accounts for which the opportunity is suitable, taking into consideration each Account's investment criteria and strategy, as well as each Account's acquisition budget for the year. These procedures are periodically reviewed by Prudential to ensure that each Account receives equitable treatment.

6. During the course of Prudential's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When Prudential shares these investments among more than one Account, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a request for exemption, with certain proposed safeguards designed to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

7. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to Prudential's involvement in such transactions and which are the subject of this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must also disclose the principles and procedures to be used to resolve any anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted.

8. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. With respect to contractholders who are already in an ERISA-Covered Account that proposes to participate in the sharing of investments in the future, each such

contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted before the Account begins to participate in the sharing of investments. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to Prudential. A plan contractholder in a closed-end pooled ERISA-Covered Account does not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

9. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by Prudential or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocation which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointments. Prudential and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. In the case of transactions involving the possible transfer of an interest in a real estate investment between the General Account and an ERISA-Covered Account, the independent fiduciary will not be limited to approving or rejecting the recommendations of Prudential, but will have full authority to negotiate the terms of the transfer (in accordance with the independent appraisal procedure described below) on behalf of the ERISA-Covered Account. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

10. The independent fiduciary must be unrelated to Prudential or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of Prudential, or be affiliated in any way with Prudential or any of its affiliates. (See definition of "affiliate" in Section V(a), below.) The independent fiduciary must be either (1) a business organization which has (or whose principals have) at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (excluding retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Prudential and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will exclude compensation for services of an independent fiduciary who is initially selected by a plan sponsor for a single customer ERISA-Covered Account, because this situation would not give rise to the possibility of divided loyalty on the part of the independent fiduciary. The income limitation will include services rendered to the Accounts under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) acquire any property from, sell any property to, or borrow any funds from, Prudential or its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A plan sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

11. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by Prudential. In that event, the independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. The applicant represents that because pooled ERISA-Covered Accounts often include several hundred plan contractholders, the independent fiduciary will be selected initially by Prudential. Prior to the commencement of the independent fiduciary's responsibilities on behalf of an Account, the selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such an Account by vote proportionate to their interests in the Account.

12. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. The information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from Prudential or a Prudential affiliate during the preceding year, including compensation for any business services performed by the fiduciary or any affiliate for Prudential or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve Prudential's initial selection of the fiduciary or fiduciary committee and

whether to continue such approval each year thereafter.[1]

13. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, "for cause" by a majority vote of the other members of the committee. The term "for cause" means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. Prudential will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by members of the committee, Prudential or plan contractholders. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

14. The independent fiduciary will be compensated by the ERISA-Covered Account. Prudential may indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of New Jersey and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

15. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by Prudential pursuant to the recordkeeping requirements outlined in the General Conditions below.

16. In connection with the management of real estate shared investments, it is possible that Prudential, on behalf of the General or Non-ERISA Accounts, or the independent fiduciaries for ERISA-Covered Accounts participating in a shared investment, may develop different approaches as to whether or how long an investment should be held by an Account. Certain situations may also arise during the course of Prudential's holding of a shared real estate investment in which decisions will need to be made where it is not possible to obtain the agreement of Prudential and all of the independent fiduciaries involved. These situations may arise as a result of an action taken by a third party, or they may arise in connection with an action proposed by Prudential or the independent fiduciary for an ERISA-Covered Account. In such cases, Prudential will make recommendations to the independent fiduciaries regarding a proposed transaction. If a course of action cannot be found that is acceptable to each independent fiduciary, a stalemate procedure will be followed to ensure that a decision can be made. The applicant represents that the stalemate procedure is similar to procedures typically used to resolve disputes between co-venturers under real estate joint venture agreements and is therefore familiar to most real estate investors.

17. With respect to stalemates between two or more ERISA-Covered Accounts which share an investment, the stalemate procedure is designed to provide a result that is similar to what would occur in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action which will be taken in such cases is the one that does not require an Account: 1) To invest new money; 2) to change the terms of an existing agreement; or 3) to change the existing relationship between the Accounts.

18. However, one additional option will be provided in the event of such stalemates. Where investments are shared by two or more Accounts (other than the General Account), Prudential will make recommendations to the independent fiduciaries of each participating ERISA-Covered Account regarding investment management decisions that must be made for a real estate shared investment. For example, if the independent fiduciaries cannot agree on a Prudential recommendation, Prudential may offer alternate recommendations (possibly including partition and sale of undivided interests) in an attempt to facilitate agreement. If the independent fiduciaries still cannot agree, each ERISA-Covered Account will be offered the opportunity to buy out the other ERISA-Covered Account's interest on the basis of a specified price. The specified price may be based on the price offered by a third party, or, if no third party offer is received (or if the third party offer is unacceptable to either ERISA-Covered Account), the specified price will be the price established under the independent appraisal procedure described below. As in a buy-sell provision in a typical joint venture, the ERISA-Covered Account to which the offer is made will have the option to sell to the offering ERISA-Covered Account at the specified price, or to buy out the offering ERISA-Covered Account's interest at that price.

19. If the independent fiduciary for the ERISA-Covered Account which disagrees with Prudential's recommendation does not wish to make a buy-sell offer to the other ERISA-Covered Account, the other Account(s) (except for the General Account) may do so. If no ERISA-Covered Account chooses to exercise the buy-sell option, Prudential will take the action designed to preserve the status quo, i.e., the action designed to avoid expenditure of additional funds by the Accounts and avoid any change in existing arrangements or contractual relationships.

20. Where a real estate investment is shared by the General Account and one or more ERISA-Covered Accounts and a stalemate occurs between the General Account and an ERISA-Covered Account, Prudential may offer alternate recommendations to facilitate an agreement. If the Accounts still cannot reach agreement, each Account will be offered the opportunity to buy out the other Account's interest on the basis of a specified price, which will be established in accordance with the independent appraisal procedure described below, or will be the price

[1] Prudential represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

offered by a third party. If none of the Accounts elects to make a buy-sell offer to the other Account, Prudential would be required to take the action selected by the independent fiduciary of the ERISA-Covered Account. Where the General Account wishes, e.g., to hold its interest and the independent fiduciary for the ERISA-Covered Account determines to sell its interest, the General Account will buy out the interest of the ERISA-Covered Account at the price offered by the third party, or, at the ERISA-Covered Account's option, at an independently determined price. Conversely, where the independent fiduciary for the ERISA-Covered Account determines to retain its interest while the General Account wants to sell its interest, the ERISA-Covered Account has the option of buying out the General Account, or, if the independent fiduciary chooses not to, the status quo will be maintained.

Specific Transactions

I. Direct Real Estate Investments

(a) Transfers Between Accounts

21. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. The transfer would also be subject to the approval of the Insurance Departments of a number of states, including New Jersey and New York. Because Prudential would be acting on behalf of both the "buying" and "selling" Accounts (but not the General Account) in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406(b)(2) of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which Prudential is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer.

Ordinarily, no transfer of an interest in a shared investment will be permitted between the General Account and an ERISA-Covered Account. The transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account may be deemed to constitute a violation of sections 406(a)(1)(A) and (D) as well as sections 406(b)(1) and (2) of ERISA. As noted above, however, where a stalemate arises between the General Account and an ERISA-Covered Account, the transfer of such an interest would be permitted to resolve the conflict. Specific stalemate procedures have been developed for these situations. If, for example, a third party makes an offer to purchase the entire investment held by Prudential on behalf of the General Account and an ERISA-Covered Account, it is possible that the General Account would like to accept the offer and the independent fiduciary on behalf of the ERISA-Covered Account would like to reject the offer. In that event, Prudential may offer alternative recommendations to the independent fiduciary. If there is still no agreement, the independent fiduciary (as the party wishing to reject the offer) would be given the opportunity to buy-out the General Account's interest at a specified price. This price may be a proportionate share of the third party offer; or, if such price is unacceptable to the ERISA-Covered Account, a proportionate share of the price determined through the independent appraisal procedure described below. This procedure would give the ERISA-Covered Account an opportunity to retain its interest in the shared investment. If the ERISA-Covered Account does not choose to buy-out the General Account's interest, the General Account would be required to accede to the direction of the ERISA-Covered Account and would, therefore, reject the third party offer.

If, in the event of a third party purchase offer, the General Account wants to reject the offer but the independent fiduciary on behalf of the ERISA-Covered Account wants to accept the offer, the procedures described above would apply, except that the General Account (as the party wishing to reject the offer) would have the opportunity to buy-out the ERISA-Covered Account's interest at a proportionate share of the third party purchase offer, or, at the option of the independent fiduciary for the ERISA-Covered Account, at an independently determined price. This will permit the ERISA-Covered Account to sell its interest in a real estate investment, if it chooses to do so, at no less than the same price it would have received from a third party.

Even in the absence of a third party offer, Prudential may recommend the sale of a shared investment. If the independent fiduciary approves the recommendation, Prudential will arrange for the sale. If the independent fiduciary does not approve Prudential's recommendation, Prudential may offer alternative recommendations, possibly including partition and sale of divided interests. If, however, no agreement is reached, the independent fiduciary (as the party wishing to reject the recommendation) would be given the opportunity to buy-out the General Account's interest in accordance with the independent appraisal procedure described below. If there is no buy-out, Prudential would take the course of action consistent with the ERISA-Covered Account's determination and would, therefore, not sell the investment.

The independent fiduciary may also determine independently that a shared investment in an ERISA-Covered Account should be sold. If Prudential agrees with this recommendation, Prudential will arrange the sale. If Prudential, on behalf of the General Account, disagrees with the recommendation, Prudential will first attempt to sell the ERISA-Covered Account's interest to another Account other than the General Account. In this case, the sale price and other terms would have to be approved by the independent fiduciary for each ERISA-Covered Account. If the ERISA-Covered Account's interest cannot be sold to another Account, Prudential may offer alternative recommendations, possibly including partition and sale of the ERISA-Covered Account's interest to a third party. If no agreement is reached with respect to these options, the General Account (as the party opposed to the sale) would have the opportunity of buying out the ERISA-Covered Account's interest at a price established under independent appraisal procedures described below. If there is no buy-out and no agreement, Prudential will be required to take the course of action consistent with the ERISA-Covered Account's determination and will sell the entire investment.

Where an independent price for the transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account is not established by an offer from an unrelated third party (or where

the third party price is unacceptable to the ERISA-Covered Account), the stalemate procedure provides for the appointment of an independent appraiser. Under this procedure, Prudential and the independent fiduciary will each appoint an independent appraiser. These two appraisers will then choose a third appraiser. The panel of appraisers will each evaluate the entire investment, and the average of the three appraisals will be used to determine the proportional value of each shared investment interest. However, the General Account and the ERISA-Covered Account may agree that, if one valuation is more than a specified percentage outside the range of the other two valuations, that valuation may be disregarded and the transfer price will be the average of the remaining two valuations. The applicant represents that this procedure, which is of the variety typically used in real estate joint venture agreements, provides adequate protection for the ERISA-Covered Account because the independent fiduciary is an equal participant in the appraisal process. See Section I(a).

(b) Joint Sales of Property

22. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined for all of the participating Accounts that the sale is desirable. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[2] Similarly, Prudential may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. In accordance with Prudential's stalemate procedures, if the independent fiduciary for one ERISA-Covered Account wishes to sell its interest in a shared investment and the independent fiduciary for another ERISA-Covered Account does not want to sell, Prudential will attempt to negotiate a compromise, including the transfer of interests from one Account to the other. If no agreement can be reached, the status quo will be maintained and no sale will be made. See Section I(b).

(c) Additional Capital Contributions

23. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by Prudential on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;[3] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[4] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds to Meet Additional Capital Requirements

24. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

25. Prudential occasionally makes real estate investments consisting of interim construction loans or medium or long-term loans on a property. In some instances, Prudential may have the opportunity to obtain an equity ownership interest in the underlying

[2] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[3] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[4] In the case of shared real-estate investments owned entirely by Prudential accounts, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

real property upon maturity of the debt or at the election of Prudential. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. These situations may also occur where two or more Accounts hold interests in debt investments in respect of the same property, and one interest is subordinate to the other in the event of insolvency. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since Prudential maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit Prudential on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See Section I(e).

II. Joint Venture Investments

26. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which Prudential and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Generally, Prudential's co-venturer acts as managing partner of the joint venture. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when Prudential's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) Additional Capital Contributions to Joint Ventures

27. As in the case of investments made entirely by Prudential, joint venture real estate investments sometimes require additional operating capital. Typically, a joint venture agreement will provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interest in the venture of the non-contributing joint venturer.[5] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where Prudential's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that Prudential will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of Prudential's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

28. *Prudential Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[6] the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and

[5] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or "squeezed down", on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[6] In any case where the General Account and one or more ERISA-Covered Accounts share Prudential's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account, up to its pro rata share of the additional capital call. Thus, the General Account will never be the cause as between the Accounts of a capital contribution shortfall by Prudential that would result in a capital basis squeeze down by a co-venturer.

will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In addition, the General Account may make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. In that event, the equity interest of the ERISA-Covered Account will be "squeezed down" (relative to the equity interest of the General Account) on a fair market value basis. This option would avoid the capital basis squeeze-down of the ERISA-Covered Account's interest by the co-venturer. Such contribution would be made by the General Account only after the independent fiduciary for the ERISA-Covered Account is given an opportunity to make an additional contribution. See Section II(a)(3).

A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts might result in a violation of section 406 of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides relief for these disproportionate contributions.

29. *Co-Venturer Shortfall.* In some cases, Prudential's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and Prudential may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of Prudential's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[7] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a disproportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) Third Party Purchases of Joint Venture Properties

30. Under the terms of typical joint venture agreements, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if Prudential on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, Prudential on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture. When Prudential's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the developer, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that Prudential on behalf of the Accounts provide the co-venturer with a unified buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, Prudential might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able to buy out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit Prudential to respond to third-party purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account in accordance with the stalemate procedure, as described below (see rep. 31, below).

31. In a case involving the sharing of a joint venture interest between two ERISA-Covered Accounts, if one ERISA-Covered Account wishes to buy out the co-venturer and the other ERISA-Covered Account is unable or unwilling to do so, the ERISA-Covered Account wishing to buy out the co-venturer would have the opportunity to do so if the other ERISA-Covered Account's interests can also be accommodated. This could be accomplished if, for example (1) the second ERISA-Covered Account wishes to sell its interest to the first ERISA-Covered Account (at a proportionate share of the price offered by the third party offeror) and the first ERISA-Covered Account agrees; or (2) the second ERISA-Covered Account wishes to continue holding its original interest. If, however, the second ERISA-Covered Account wishes to sell its interest and the first ERISA-Covered Account is unwilling or unable to buy it, both Accounts would be required to sell to the third party offeror in order to avoid the expenditure of additional funds by an unwilling Account.

[7] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, the General Account would also contribute at least its pro rata share of such capital.

If the General Account participates in a joint venture interest subject to a third party purchase offer, the stalemate procedure would provide the same alternatives, except that if the General Account wishes to accept the third party purchase offer and the ERISA-Covered Account wishes to buy out the co-venturer (and is unwilling or unable to buy out the General Account's interest), the General Account would be required to buy out the co-venturer with the ERISA-Covered Account. See Section II(b).

(c) Rights of First Refusal in Joint Venture Agreements

32. Under the terms of typical joint venture agreements, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Prudential and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Prudential would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by Prudential on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by Prudential on behalf of the Accounts, exemptive relief is being requested that would permit Prudential to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a joint venture investment, even though Prudential may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Joint Venture Agreements

33. Joint venture agreements entered into by Prudential typically provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by Prudential on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision made by Prudential in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit Prudential to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment.

34. In the event that Prudential recommends the initiation of the buy-sell option against the co-venturer, Prudential will exercise the option if the independent fiduciary on behalf of each participating ERISA-Covered Account approves the recommendation. If, in the case of a General Account/ERISA-Covered Account shared joint venture investment, the independent fiduciary does not agree with Prudential's recommendation, the independent fiduciary would be given the opportunity to buy out the General Account's interest at a price to be determined in accordance with the independent appraisal procedure described above. If the independent fiduciary declines to buy out the General Account's interest, the General Account would then have the opportunity to buy out the ERISA-Covered Account's interest (provided the independent fiduciary for the ERISA-Covered Account approves of such sale), also in accordance with the independent appraisal procedure. If neither the General Account nor the ERISA-Covered Accounts buys out the other's interest in the joint venture investment, Prudential would take the course of action most consistent with the determination of the ERISA-Covered Account, and would, therefore, not exercise the buy-sell option.

In the event that the co-venturer initiates the buy-sell option with respect to a shared joint venture investment, Prudential must either sell its entire interest to the co-venturer or reject the offer and buy-out the co-venturer's interest at that price. If the participating Accounts agree upon the course of action to be taken, Prudential will then take the agreed action. If no agreement is reached, various alternatives may be considered. For example, in the case of a General Account/ERISA-Covered Account shared joint venture investment, if Prudential recommends rejection of the offer (and consequent purchase of the co-venturer's interest), but the independent fiduciary wants to accept the offer, the General Account would have the option to purchase the co-venturer's interest solely on behalf of the General Account. If the General Account chooses this option, the ERISA-Covered Account (which wished to accept the co-venturer's offer) would have the opportunity to sell its interest to the General Account, at a proportionate share of the price offered by the co-venturer, but would not be required to do so. However, if the

General Account declines to purchase the ERISA-Covered Account's interest where the ERISA-Covered Account wishes to accept the buy-sell offer, the entire joint venture interest would be sold to the co-venturer. If the ERISA-Covered Account wishes to reject the buy-sell offer (and purchase the co-venturer's interest) and the General Account wishes to accept the offer, the General Account would be required to purchase its proportionate share of the co-venturer's interest, unless the independent fiduciary for the ERISA-Covered Account elects to purchase more than its proportionate share (including the entire co-venturer interest).

Where two or more ERISA-Covered Accounts share a joint venture investment, the stalemate procedure is similar, except that no ERISA-Covered Account would be required to purchase the interest of a co-venturer (and thus expend additional funds) against its wishes. See Section II(d).

(e) Transactions with Joint Venture Party in Interest

35. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and an ERISA-Covered Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See Section III.

36. Prudential has requested relief for the subject transactions effective December 20, 1988. Although Prudential is not aware of any shared real estate investments in which an ERISA-Covered Account maintained by Prudential participates, at least one ERISA-Covered Account has retained an independent fiduciary and may share investments prior to the publication of this notice of proposed exemption. Accordingly, Prudential has requested retroactive relief.

* * * * *

Initial Proportionate Allocations

The applicant, Prudential, has not requested exemptive relief for the initial allocation of shared real estate investments by Prudential among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 3 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more Accounts maintained by Prudential (which may include both its General Account and one or more ERISA-Covered Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[8]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by Prudential does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

[8] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which are engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Prudential, of the notice of proposed exemption as published in the **Federal Register** to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by Prudential

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in this notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(d)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts

in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by Prudential

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate (as defined in section V(d)) additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account(s), on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Prudential on behalf of two or more Accounts, including one or more ERISA-Covered Account(s), of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account(s) has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account(s) are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account(s), on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Prudential on behalf of two or more Accounts, including one or more ERISA-Covered Account(s), to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered

Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Prudential and its affiliates. This condition shall not apply to plans covering employees of Prudential.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption if granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee composed of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Prudential or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Prudential, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Prudential, its affiliates, or any Account maintained by Prudential or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Prudential or its affiliates for each of the transactions in this proposed exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. Prudential and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Prudential maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Prudential, any

of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of Prudential includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential,

(2) Any officer, director or employee of Prudential or person described in section V(a)(1), and

(3) Any partnership in which Prudential is a partner.

(b) An "Account" means the General Account (including the general accounts of Prudential affiliates which are managed by Prudential), any separate account managed by Prudential, or any investment advisory account, trust, limited partnership or other investment account or fund managed by Prudential.

(c) The "General Account" means the general asset account of Prudential and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, DC, this 7th day of October, 1993.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[Application No. D–9213, et al.]

Proposed Exemptions Texas Instrument Employees Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Attention:* Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Texas Instruments Employees Pension Plan (the Plan) Located in Dallas, Texas

[Application No. D–9213]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing by the Plan to Texas Instruments, Inc. (the Employer) of either or both of two parcels of improved real property located in Dallas, Texas (the Dallas Parcels) and to the continued holding by the Plan of the Dallas Parcels, effective upon the sale, lease, or other disposition to third parties of another parcel owned by the Plan, located in a suburb of Detroit, Michigan (the Michigan Parcel), or upon the expiration of the existing lease between the Plan and the Employer on the Michigan Parcel. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) An independent qualified fiduciary (the I/F), acting on behalf of the Plan, determines that the transactions are feasible, in the interest of, and protective of the Plan;

(b) The I/F manages the Dallas Parcels on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Dallas Parcels;

(c) The fair market value of the Dallas Parcel(s) will at no time exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(d) The I/F negotiates, reviews, and approves the terms of the leases with the Employer on the Dallas Parcels;

(e) The terms and conditions of each of the leases with the Employer on the Dallas Parcels will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(f) An independent qualified appraiser determines the fair market value of the rental on each of the Dallas Parcels;

(g) The I/F monitors compliance with the terms of the leases on the Dallas Parcels to the Employer throughout the duration of such leases and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels;

(h) The Plan incurs no fee, costs, commissions, or other charges or expenses as a result of its participation in the transactions, other than the fee payable to the I/F; and

(j) The I/F ensures that the terms and conditions described herein are at all time satisfied.[1]

Summary of Facts and Representations

1. The Employer and sponsor of the Plan is a Delaware corporation with offices at 13500 North Central Expressway, Dallas, Texas. The Employer is engaged in the manufacture and sale of a variety of products in the electrical and electronic industry for industrial, consumer, and government markets. It is represented that the Employer employs over 40,000 individuals and sponsors several employee benefit plans.

2. The Plan is a defined benefit pension plan which, as of September 18, 1992, had participants and beneficiaries totaling approximately 42,625. The administrator of the Plan is a retirement committee composed of three members who are officers of the Employer. As of May 31, 1992, the Plan's assets had an aggregate fair market value of approximately $680.9 million.

All the assets of the Plan are held in a single trust (the Trust) for which the Northern Trust Company, an Illinois corporation, serves as trustee. The assets of the Plan held in the Trust consist of various securities and real property.

The Plan's real property holdings in the Trust include six parcels. Among these six, are the two Dallas Parcels and the Michigan Parcel (collective, the Properties). It is represented that the Plan acquired the Michigan Parcel and a substantial portion of one of the Dallas Parcels from the Employer and that each of these three Properties are currently leased in their entirety to the Employer. These Properties have an estimated value of $20.1 million and constitute approximately 3% of the total value of the Trust's assets.[2]

3. The Plan acquired the Michigan Parcel, located at 33767 West Twelve Mile Road, Farmington Hills, Michigan, on March 14, 1980, at a cost of $1,406,096. The Michigan Parcel presently consists of approximately 16.5 acres of commercial real estate. It is represented that the Plan in 1981 constructed an office complex and warehouse on the Michigan Parcel at a total cost for the building of $3,757,769. The aggregate cost to the Plan for the land and the buildings was approximately $5.2 million. An appraisal of the Michigan Parcel prepared by J. Rodney Layton, MAI, of Holmes and Layton, Inc., real estate appraisers and counselors, established the fair market value of the Michigan Parcel on March 1, 1993, at $3,745,000.[3] It is represented that the fair market value of the Michigan Parcel constitutes approximately .6% of the total value of the Plan's assets.

The lease agreement between the Plan and the Employer on the Michigan Parcel provided for an initial lease term of twelve (12) years that commenced on June 1, 1981, and expired on May 31, 1993. Pursuant to that agreement, the Employer could have extended the lease term for up to three (3) additional five (5) year periods. However, by letter dated February 9, 1993, the Employer agreed to renew the lease for a period of only one (1) year from the May 31, 1993, expiration date, in order to avoid the occurrence of a prohibited transaction while consideration of this proposed exemption is pending and to enable the Plan to market the Michigan Parcel to a potential third party purchaser free of any contingency. It is represented that the Employer does not intend to continue leasing the Michigan Parcel after May 31, 1994.

It is represented that rent on the Michigan Parcel during the first ten (10) years of the initial lease term was charged at a fixed rate that provided to the Plan an annual net return equal to approximately 11.8% of the Plan's total investment in the Michigan Parcel. Rental charges for the final two (2) years of the initial term or for any extended term were to be determined by reference to the prevailing market rate for properties of comparable quality, size, utility, and location; provided that the Plan received the same annual net return, and the rent did not decrease. It is represented that the renewal by the Employer for the one (1) year term due to expire in 1994 is at the current rental rate under the lease agreement.

4. One of the two Dallas Parcels consists of a tract of approximately 13.2 acres of land which is improved by an office/industrial facility, situated at the intersection of Walnut Lane and Floyd Road (the Floyd Road Parcel) in the northern portion of Dallas, Texas. The Plan acquired the Floyd Road Parcel on July 23, 1979, from the Royal Gorge Company, an unrelated third party, and completed construction on the office/industrial facility on March 18, 1981, at a total cost for the land and building of approximately $6 million. The Floyd Avenue Parcel is estimated to have a current fair market value of approximately $6.2 million.

The Plan agreed to lease the Floyd Avenue Parcel to the Employer, pursuant to a lease agreement which provided for an initial lease term of ten (10) years, commencing on March 18, 1981, and expiring on March 17, 1991. Upon expiration of the initial term, the lease was renewed for an additional period of five (5) years which is due to

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Employer represents that the exemption provided by section 408(e) of the Act applies to the acquisition by the Plan of the Dallas Parcels and the Michigan Parcel and the leaseback of these Properties to the Employer. The Department herein does not opine whether the requirements of the statutory exemption, as set forth by section 408(e) of the Act, have been met by the Employer under the circumstances described. Further, the Department herein is not proposing relief for any violation of Part 4 of the Act which may have arisen as a result of the acquisition or holding of these three Properties.

[3] It is represented that the Plan has received from an unrelated third party an offer to purchase the Michigan Parcel for cash in the amount of $4.175 million, subject to various conditions, including but not limited to, the purchaser's remaining satisfied with the Michigan Parcel after the expiration of a ninety (90) day review period and the purchaser's obtaining occupancy of the property on or before February 1, 1994.

expire on March 17, 1996. Pursuant to the lease agreement, the Employer may extend the lease term for up to two (2) additional five (5) year periods.

Rent on the Floyd Road Parcel during the initial term was charged at a fixed rate that provided the Plan with an annual net return equal to approximately 12.25% of the Plan's total investment in the Floyd Road Parcel. At the commencement of each additional five (5) year extended term, rent will be determined by reference to prevailing market rates at the beginning of each subsequent five (5) year term, but such reference will in no instance cause a decrease in rent.

5. The other of the Dallas Parcels is located on Lemmon Avenue (the Lemmon Avenue Parcel) near downtown Dallas, Texas. The Lemmon Avenue Parcel actually consists of two adjacent tracts of land 13 acres and 1.4 acres, respectively, aggregating approximately 14.4 acres. The Lemmon Avenue Parcel is improved by an office/industrial facility. It is represented that the Plan acquired from the Employer on December 27, 1960, the 13 acre tract of the Lemmon Avenue Parcel with its improvements, at a cost of approximately $3.7 million. On October 19, 1964, the Plan acquired the additional 1.4 acres of land of the Lemmon Avenue Parcel from an unrelated third party. Subsequently, the Employer constructed capital improvements on the 13 acre tract as an extension to the existing building on that parcel. It is represented that when the capital improvements were completed in 1987, the Plan purchased from the Employer such capital improvements at a cost of approximately $4.3 million. The Lemmon Avenue Parcel, including all additional land and improvements, is estimated to have a current fair market value of $9.6 million.

The entire Lemmon Avenue Parcel is and has been leased to the Employer. The orignal lease agreement between the Plan and the Employer on the Lemmon Avenue Parcel provided for a single, non-extendable term at a fixed annual net rate of return equal to approximately 11.5% of the Plan's original investment. The original lease term commenced on March 31, 1962, and was to have expired on December 31, 1989. However, on December 21, 1987, upon completion of the capital improvements and the Plan's purchase of such improvements, the Plan entered into an extended lease with the Employer for a fixed term of ten (10) years from January 1, 1990, through December 31, 1999, with no renewal options. During this current extended lease term, rent is fixed in two amounts. The first amount applies to the capital improvements for the period January 1, 1988, through December 1, 1997, and includes an annual net return of approximately 9.5% of the Plan's total investment in the capital improvements. Under the provisions of the extended lease term, the Employer is not obligated to pay rent with respect to the capital improvements for the period commencing January 1, 1998 through December 31, 1999. The second amount applies to the remainder of the Lemmon Avenue Parcel for the period January 1, 1990, through December 31, 1999, and includes an annual net return of approximately 11.5% of the Plan's total investment in the Lemmon Avenue Parcel, excluding the capital improvements. During the final five (5) years of the extended term, the second amount of rent will be adjusted, if necessary, by reference to the prevailing market rate for properties of comparable quality, size, utility, and location; provided that such reference will in no instance cause a decrease in rent.

The Employer represents that in 1990 it first discovered underground water contamination at the Lemmon Avenue Parcel. It is further represented that the contamination possibly occurred as a result of manufacturing operations formerly conducted on the premises by the Employer. In this regard, the Employer has retained an independent environmental expert to determine the extent of the contamination and to design remedial actions to remove such contamination. Accordingly, the Employer has agreed to indemnify and hold the Trust harmless with respect to all costs of such remedial action and will protect the Trust from any losses as a result of the contamination.

6. It is represented that the Dallas Parcels and the Michigan Parcel are presently deemed to be "qualifying employer real property," within the meaning of section 407(d)(4) of the Act. This representation is based, in part, on the fact that these three Properties are leased to the Employer by the Plan and the fact that such Properties are not all located in the same geographic area. The applicant maintains that the "substantial number" requirement and the requirement that the parcels be "dispersed geographically," as set forth in section 407(d)(4)(A) of the Act are met.[4] As a result, the applicant maintains that the acquisition and leasing of the three Properties has been pursuant to the statutory exemption provided by section 408(e) of the Act and 4975 of the Code. Similarly, the applicant maintains that the purchase of the capital improvements on the Lemmon Avenue Parcel in December 1987, by the Plan from the Employer was also covered by section 408(e).

It is anticipated that either, as noted in footnote 3 above, the Plan will on or before February 1, 1994, sell the Michigan Parcel to third parties, or in May 1994, upon expiration of the lease on the Michigan Parcel, the Employer will not extend the term. In either event, if the Plan continues to lease the Dallas Parcels to the Employer after the disposition of the Michigan Parcel, the applicant maintains that the geographic dispersal requirement, as set forth in section 407(d)(4)(A) of the Act, may no longer be satisfied, because the Dallas Parcels are located within eight miles of each other in the same city. In addition, if after the disposition of the Michigan Parcel, the Employer fails to renew the lease on one of the Dallas Parcels or if the Plan sells, leases, or otherwise disposes of either the Floyd Road Parcel or the Lemmon Avenue Parcel to third parties, then only one of the Dallas Parcels would remain subject to a lease with the Employer. In this circumstance, the applicant maintains that the "substantial number" requirement, as set forth in section 407(d)(4)(A) of the Act may not be satisfied.

In the event the Dallas Parcels no longer are deemed to be "qualifying employer real property," it is represented that by continuing to hold the Dallas Parcels and continuing to lease such parcels to the Employer, the Plan may no longer be able to rely on the statutory exemption afforded by section 408(e) of the Act. Accordingly, the applicant seeks exemptive relief for violations of section 406 and 407 of the Act which may arise from the Plan's continued holding and leasing of either or both of the Dallas Parcels to the Employer, effective upon the sale, lease, or other disposition to third parties of the Michigan Parcel or upon the

[4] As set forth in relevant part below, section 407(d)(4) of the Act, defines the term "qualifying employer real property" as parcels of employer real property—(A) if a substantial number of the parcels are dispersed geographically; (B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; and (C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer). Section 408(e) of the Act provides, in relevant part, for the acquisition, sale, or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—(1) if such acquisition, sale, or lease is for adequate consideration ..., (2) if no commission is charged with respect thereto, and (3) if— ...(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, ... the lease or acquisition is not prohibited by section 407(a).

expiration of the existing lease with the Employer on the Michigan Parcel.

7. It is represented that the proposed transactions are feasible, in that such transactions will be monitored by an I/F. It is further represented that there are sufficient safeguards for the Plan and its participants and beneficiaries. In this regard, it is represented that the I/F has the obligation to assess the prudence of the continued ownership by the Plan of the Properties and to negotiate, when appropriate, favorable terms for the sale, lease, or other disposition of such Properties. Under the terms of the proposed exemption, it is represented that the I/F is responsible for monitoring and legally enforcing the payment of rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels. The I/F is also responsible for ensuring that all the terms and conditions as described herein are at all times satisfied.

The applicant represents that the proposed exemption is in the interest of the Plan, and its participants and beneficiaries, in that the I/F is responsible for making careful, reasoned, and well-supported decisions for the holding, disposal, or leasing of the Properties. Such an exemption would permit the Plan to continue to own the Dallas Parcels and to lease such parcels to the Employer, until such time as these parcels can either be disposed of in an orderly fashion or leased to parties other than the Employer. The applicant maintains that without the requested exemption and in order to avoid the occurrence of prohibited transactions, the Plan would have to choose between: (a) Terminating prematurely the existing leases with the Employer on the Dallas Parcels; (b) disposing of both Dallas Parcels simultaneously in a forced sale in a depressed real estate market; or (c) disposing of one of the Dallas Parcels simultaneously with the expiration of the Employer's lease on the other parcel. Alternatively, the Plan would have the choice of acquiring another "geographically dispersed" parcel, leasing it to the Employer, and continuing to rely on the statutory exemption provided by section 408(e) of the Act. The applicant maintains that none of these options would be in the best interest of the Plan, because such actions would be taken solely to avoid the consequences of committing a prohibited transaction, rather than with regard to whether such actions were proper, prudent, or desirable.

8. The NationsBank of Texas, N.A. (NationsBank) (formerly NCNB Texas National Bank)[5], a national banking association, has been retained to act on behalf of the Plan as the I/F with respect to the proposed transactions. In this regard, the fees and expenses of NationsBank in connection with the proposed exemption will be paid by the Plan. NationsBank acknowledges it is a fiduciary and that it possesses complete authority and control respecting whether the Plan will retain, lease, or sell any or all of the three Properties that are described herein. NationsBank represents that it understands its duty as fiduciary is to act prudently and solely in the interest of the Plan's participants and beneficiaries and for the exclusive purpose of providing benefits to such participants and beneficiaries.

With respect to NationsBank's qualifications to serve as I/F, it is represented that NationsBank has general experience in acting as a fiduciary and specific experience in acting on behalf of employee benefit plans. In this regard, as of May 31, 1992, NationsBank had in excess of $45 billion in assets under discretionary management, including more that $21 billion in assets of employee benefit plans subject to the Act. NationsBank is now the subtrustee and was previously the trustee of the Plan with respect to the three Properties described herein and as such developed a thorough knowledge of the Properties. In addition, it is represented that NationsBank, through its Real Estate Investment Services unit located in Dallas, Texas, is familiar with the real estate markets in which the Dallas Parcels are located.

With respect to its independence, NationsBank represents that it has no interlocking directorships with the Employer.[6] However, NationsBank does provide cash management, payroll checking, foreign currency exchange, and related banking services to the Employer. In its capacity as a commercial bank, NationsBank receives deposits from, and, in the past, has served as a lender to, the Employer and certain of its subsidiaries. It is represented that the Employer does not engage in long-term borrowing from NationsBank, but maintains a line of credit with NationsBank which if it were in full use by the Employer would amount to .025% of NationsBank outstanding credit facilities, as of May 14, 1993. It is represented that NationsBank has also served as a former trustee or is currently serving in the capacities as investment manager for a stock index fund, and as a custodian of securities issued by the Employer under various trusts established for other plans sponsored by the Employer or its subsidiaries. It is represented that fees received from the Employer by NationsBank for services rendered constitute less than one quarter of one percent (.25%) of NationsBank's total annual net income of $434,550,000, as of December 31, 1992.

In light of the Employer's expressed intention not to renew the lease on the Michigan Parcel, NationsBank has determined that it is in the interest of the Plan to either sell or lease the Michigan Parcel to a third party in order to insure an adequate rate of return to the Plan. In this regard, NationsBank represents that it presently has an offer from a good faith purchaser for the sale of the Michigan Parcel and will consummate such sale only if it determines, at the time of the closing, that the sale price is at fair market value or better.

With respect to the Dallas Parcels, however, according to NationsBank, the sale or leasing of such parcels to third parties is presently not a prudent course of action and is not in the best interests of the Plan and its participants and beneficiaries. In this regard, NationsBank represents that the real estate market conditions in Dallas, Texas, are such that the Plan would not realize as favorable a return on its investment, were it to sell one or both

[5] It is represented that NationsBank has become involved in certain lawsuits and investigations through its relationship with various predecessors and affiliates. In this regard, it is represented that the Department has recently investigated the procedures and practices employed by the predecessor of NationsBank, NCNB Texas National Bank, involving the receipt and disposition of proxies for stock owned by its employee benefit plan clients. Enclosed with the application is a copy of a letter, dated August 28, 1992, from the Dallas Area Office which indicates that the investigation was concluded and that no further action by the Department was contemplated at that time.

In addition, NationsBank is involved in litigation, as a result of its affiliation through a common parent corporation with NationsBank Trust Company (Georgia), N.A. (NationsBank Trust). It is represented that NationsBank Trust, the purchaser of Citizens and Southern Trust Company (Citizens), has been named in a lawsuit solely because of its position as successor to Citizens. The litigation involves allegations of breach of fiduciary duty in the conduct of Citizens, as trustee for an ESOP, with respect to its procedures and decision making on tenders. The suit was filed in 1992 and is pending in the U.S. District Court for the Northern District of Georgia (No. 1:92-CV-1474-HTW). The Department has obtained summary judgment on one of its allegations involving indemnification running from the ESOP sponsor to Citizens. A motion for reconsideration has been filed by NationsBank and is pending. No trial date has been set.

[6] It is represented that directors and officers of the Employer have from time to time served as directors of the parent and affiliates of RepublicBank Dallas, N.A., the predecessor of NationsBank.

of the Dallas Parcels. Further, in the view of NationsBank, the discovery of environmental contamination on the Lemmon Avenue Parcel significantly reduces the chances of a sale or a lease of that property to third parties. NationsBank notes that both of the Dallas Parcels are currently leased to the Employer under favorable terms. For this reason and those stated above, NationsBank believes that the Plan should continue to hold the Dallas Parcels and continue its leasing arrangements with the Employer until such time as the disposition of the Dallas Parcels is prudent and in the best interest of the Plan and its participants and beneficiaries.

NationsBank represents that the leasing and continued holding of the Dallas Parcels is administratively feasible in that procedures are in place with respect to these parcels: (a) To maintain income and expense records; (b) to secure adequate hazard insurance and other appropriate types of insurance; (c) to procure periodic updates of appraisals; (d) to monitor timely payment of real estate taxes, repairs, and capital expenditures; and (e) to monitor leases and rents and follow up in a timely fashion on delinquencies.

NationsBank represents that the proposed transactions are protective of the Plan in that the fair market value of all three Properties constitutes no more than five percent (5%) of the total value of the assets of the Plan. It is further represented that currently the Floyd Avenue Parcel and Lemmon Avenue Parcel involve .9% and 1.4% of the Plan's assets, respectively. NationsBank represents that it will monitor the proportion of Plan assets constituted by the Dallas Parcels and will take steps necessary to insure that at all times during the transactions the value of the Dallas Parcels do not constitute more than twenty-five percent (25%) of the value of the Plan's total assets. In this regard, if it appears to NationsBank that, due to shrinkage in the value of other Plan assets or increase in the value of the Dallas Parcels, the value of such parcels is approaching twenty-five percent (25%) of the total value of the assets in the Plan, NationsBank will lease one or both of the Dallas Parcels to unrelated third parties or dispose entirely of one or both in order to prevent exceeding the twenty-five percent (25%) limitation, as set forth in this proposed exemption.

It is represented that the transactions are in the interest of the Plan in that the Dallas Parcels provide a favorable return. In this regard, the Lemmon Avenue Parcel and the Floyd Avenue Parcel provide cash flow, respectively, in the amount of $116,087 and $61,904 from monthly rental income.

NationsBank represents that it has caused a review of the terms of the existing leases on the Dallas Parcels. In this regard, NationsBank notes that the leases on the Dallas Parcels provide for triple net terms. Further, NationsBank has determined that the lease on Lemmon Avenue Parcel terminates only upon its expiration, and the lease on the Floyd Avenue Parcel provides for termination of the lease upon its expiration or upon condemnation of the property. In the opinion of NationsBank, these restrictive termination provisions of the leases on the Dallas Parcels are protective of the rights of the Plan and its participants.

NationsBank has also examined the rental rates in the leases on the Dallas Parcels and has determined that the rentals currently in effect under the leases are at least as favorable to the Plan as those obtainable from unrelated third parties under similar circumstances. In making this determination, NationsBank has relied upon the report of an independent appraiser. NationsBank represents that it has taken into consideration the following factors: (a) That the value of each of the three Properties compared favorably with like properties in the area, and (b) that the duration of the initial and renewal terms of each lease, and the adjustment of the rental rate to market rates compared favorably with lease provisions on similar properties. In the opinion of NationsBank, the rental rates on the Dallas Parcels were determined by the fair market value of rents in leases on similar properties, and provisions in the leases on the Dallas Parcels ensure that changes in the value of such parcels will not affect the rents received by the Plan.

Further, NationsBank represents that in a timely fashion before the transactions occur, it will obtain and assess appraisals from independent, qualified MAI appraisers on each of the Dallas Parcels, and will review the existing leases on such parcels. NationsBank represents that after such review, unless the rental rates on the existing leases on the Dallas Parcels are at or above fair market value and the other terms are at least as favorable to the Plan as arm's length terms with unrelated third parties, it will renegotiate and approve new lease terms on the Dallas Parcels to obtain fair market value terms prior to entering into the transactions.

NationsBank represents that, during the duration of the leases on the Dallas Parcels and for as long as the Plan continues to hold the Dallas Parcels, it will monitor both the Dallas commercial market and the leases on the Dallas Parcels. If, at the expiration of either lease or any extended term on the Dallas Parcels it appears that the renewal terms are less favorable to the Plan than arm's length terms, NationsBank represents that it will not renew, unless it can negotiate arm's length terms. In this regard, NationsBank represents that it will engage an independent qualified MAI appraiser for advice before determining the fair market rental value on the Dallas Parcels. Further, NationsBank represents that it has established internal procedures to ensure that steps will be taken upon default or upon late payment of rent by the Employer on either of the leases on the Dallas Parcels. Finally, NationsBank has represented that it will be responsible for ensuring that the terms and conditions as described herein are at all times satisfied.

9. Angela H. Butkus, MAI and L. Randall Denton, MAI, real estate appraisers of L.R. Denton & Co. (the Denton Appraisers), have reviewed and analyzed certain appraisal reports on the Dallas Parcels prepared by Henry S. Miller Appraisal Corporation (the Miller Corp.) and H.W. Dunham & Associates, Inc. (Dunham Inc.), independent, qualified MAI appraisal companies which are unrelated to the Employer. The Denton Appraisers have also reviewed and analyzed the lease documents with respect to the Floyd Avenue Parcel and the Lemmon Avenue Parcel. The purpose of the review by the Denton Appraisers was to render an opinion whether the values on the Dallas Parcels included in the appraisal reports were reasonable and whether the terms and rental rates in the leases on the Dallas Parcels reflected fair market value.

The Denton Appraisers reviewed three appraisals on the Lemmon Avenue Parcel: (a) A valuation prepared by the Miller Corp., dated June 30, 1989, at $6,500,000 ($26.06/SF); (b) a valuation prepared by Dunham Inc., dated June 30, 1989, at $6,250,000 ($25.06/SF); and (c) valuations prepared by Dunham Inc., dated December 5, 1991, of the fee simple including the building expansion at $7,000,000 ($22.48/SF) and of the leased fee at $9,550,000 ($30.67/SF). The Denton Appraisers also reviewed one appraisal on the Floyd Road Parcel prepared by Dunham Inc. in November 27, 1991, which estimated the value of the fee simple at $5,400,000 ($20.61/SF) and the value of the leased fee at $6,150,000 ($23.47/SF).

With respect to the fair market value of the Dallas Parcels, in the opinion of

the Denton Appraisers all the appraisal reports described in the paragraph above used three approaches to value and generally complied with appraisal standards. The Denton Appraisers noted that such appraisal reports contained a sufficient amount of data in which to arrive at conclusions of value. The Denton Appraisers were able to determine that the estimates of value were reasonable, based on their own knowledge of the real estate market and on the comparable data found in the reports.

With respect to the leasing terms and rental rates for the Dallas Parcels, the Denton Appraisers concurred that the current rental rate for the Floyd Road Parcel is considered to be above market, as of November 27, 1991, and that the current lease on the Lemmon Avenue Parcel appeared also to be above market rates, as of December 5, 1991. As indicated above, it is represented that before the transactions occur, the fair market rental value of the Dallas Parcels will be determined by an independent, qualified MAI appraiser.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The I/F will determine that the transactions are feasible, in the interest of, and protective of the Plan;

(b) The I/F will manage the Dallas Parcels on an on-going basis and will be empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Dallas Parcels;

(c) The fair market value of the Dallas Parcel(s) will at no time exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(d) The I/F will negotiate, review, and approve the terms of the leases with the Employer on the Dallas Parcels;

(e) The terms and conditions of each of the leases with the Employer on the Dallas Parcels will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(f) An independent qualified appraiser will determine the fair market value of the rental of each of the Dallas Parcels;

(g) The I/F will monitor compliance with the terms of the leases on the Dallas Parcels to the Employer throughout the duration of such leases and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels;

(h) The Plan will incur no fee, costs, commissions, or other charges or expenses as a result of its participation in the proposed transactions, other than the fee payable to the I/F; and

(j) The I/F will ensure that the terms and conditions described herein are at all times satisfied.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all present employees of the Employer eligible to participate in the Plan, all former employees of the Employer with vested benefits in the Plan, and all beneficiaries of deceased former employees of the Employer currently receiving benefits from the Plan.

It is represented that these various classes of interested persons will be notified, within fifteen (15) days of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, either by mailing or by posting a photocopy of the Notice, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The applicant represents that the posting will occur at those locations of the affected divisions of the Employer that are customarily used for notices to employees with regard to labor management relations matters. Further, it is represented that notice to interested persons given by mail will be sent first class to the last known mailing address of all former employees and beneficiaries, and to certain employees located outside the United States.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Mastercraft Industries, Inc. Master Employee Benefit Plan & Trust (the Plan), Located in Mt. Pleasant, TX

[Application Nos. D–9434 and D–9435]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan to Mastercraft Company, L.P. (the Employer), a party in interest with respect to the Plan, of certain real property and related personal property (collectively, the Property), provided the sales price is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. Mastercraft Industries, Inc., a Texas corporation, was the settlor of Mastercraft Industries, Inc. Master Employee Benefit Trust and the original employer under the Plan. The applicant states that pursuant to a corporate reorganization for reasons of Texas state taxes, the Texas corporation transferred assets to a newly formed corporation. This corporation was also named Mastercraft Industries, Inc., but was a Delaware corporation. The applicant explains that the Delaware corporation, with itself as limited partner, formed a Delaware limited partnership, the Employer, which is the employer of Plan participants and has qualified to do business in Texas.

2. The applicant represents that the Plan is an employee welfare benefit plan as defined in the Act and that the trust is a voluntary employees' beneficiary association exempt under section 501(c)(9) of the Code. In this regard, section 3.1 of the Plan's trust agreement states that the Plan is intended to qualify as a voluntary employees' beneficiary association within the meaning of section 501(c)(9) of the Code and that all contributions to the Plan and all of its assets and earnings are solely and irrevocably dedicated to the payment of benefits of the kind and type described in section 3.1. That section provides for the payment of hospitalization, medical, surgical, dental, disability income, vacation pay, holiday pay, educational expenses for employees, legal services, severance pay, death or other similar benefits to participating employees, their dependents, and in the case of death benefits, their designated beneficiaries.

The applicant explains that in addition to benefits described under section 3(1) of the Act, 26 CFR 1.501(c)(9)–3(e) permits a voluntary employees' beneficiary association to subsidize recreational activities. In this regard, Article II of the Plan provides the following benefits for Plan participants: vacation pay benefits (§ 2.1), health and medical benefits (§ 2.2), recreational facilities (§ 2.3), holiday pay (§ 2.4), and educational benefits (§ 2.5).

Sections 4.1 and 4.2 of the Plan provide that contributions to fund the benefits of the Plan shall be made solely by the Employer, and that all contributions to the Plan by the Employer shall be irrevocable and neither such contributions, nor any income therefrom nor any increments

thereon, shall be used for or diverted to purposes other than for the exclusive benefit of participating employees, their dependents, or in the case of any death benefit, to their designated beneficiaries.

3. With respect to recreational facilities, section 2.3 of the Plan provides that all employees and their families shall be entitled to use any recreational facility, defined as any property purchased by the Plan and any improvements made to it or any other property owned by the Employer for the expressed intent of providing an area for employees to participate in hobbies, sports, physical fitness programs, and other similar activities. This section further provides that the Plan administrator shall instruct the Plan trustee to acquire by purchase, lease or rent, for the benefit of all participating employees, recreational facilities such as (but not limited to): a lodge and a ski, fishing, or sail boat located not further than 200 miles from the Employer's main office. Each participating employee, according to this section, is eligible to use the facility on a reserved basis. Under this section, the Plan is responsible for all fees, taxes, operating costs, and maintenance for all facilities.

4. The Plan covered 102 participants as of August 31, 1992, when the Plan's total assets were comprised of the Property and $44,555 in cash equivalents. The Plan trustee, Mr. James W. Shanahan, and his spouse beneficially own over 80% of the Employer. The applicant represents that the Plan is winding down, the Employer no longer is funding the full cost of the Plan, the Employer currently does not intend to make future contributions to the Plan, the Plan is in a highly illiquid state because it has been paying Plan benefits in cash, and the Plan needs liquidity to pay for Plan benefits which continue to accrue. In this regard, section 7.4 of the Plan provides that upon its termination, the Plan's assets shall be used for the payment of all obligations of the Plan and, in the sole discretion of the Plan trustee, to provide additional benefits of the kind and type described in section 3.1 (described in paragraph 2, above) to the participating employees, or for such other similar or related purposes as shall not adversely affect the tax exempt status of the Plan.

5. The Property consists of a 7.214 acre recreational facility (the Facility) located on Roark Road, Lake Bob Sandlin, Camp County, Texas, and a pontoon boat, a jet ski, and a barbecue cooker (collectively, the Personal Property). The Facility has been newly improved with a concrete retaining wall, a gazebo with patio and deck area, and a boathouse with deck. The Facility's fair market value has been appraised twice within the past two years at: $130,555 as of August 25, 1992 by Gary M. Brown (Mr. Brown), SRPA, and $101,795 as of August 21, 1991 by Dwight Elledge (Mr. Elledge), MSA-MRA-MFLA.

6. Mr. Brown represents that he is an independent real-estate appraiser and owner of Gary Brown & Associates, a real-estate appraisal and consultant firm in Mt. Pleasant, Texas, and has been actively engaged in the real-estate profession since 1983, experienced in real-estate sales, management, counseling, and appraisal. Mr. Elledge represents that he is an experienced real estate broker under the Texas Real Estate Commission, a Master Senior Appraiser with the National Assoc. of Master Appraisers, and has completed formal education including real-estate appraisal, law, marketing, licensing, and finance. Both Mr. Brown and Mr. Elledge represent that they have no personal interest in or bias with respect to the participants to the proposed sale.

7. The Plan purchased the Facility on September 22, 1986 for a consideration of $125,812.20 from Clidene Mobley, who was not a party in interest with respect to the Plan. Since then, the Plan has made improvements to the Facility totaling $251,295: $57,251 for land improvements and $194,044 for a boat house, gazebo, fence, and a water well. The Plan acquired the Facility and improved it so as to provide recreational benefits under the terms of the Plan. The Property has been used by Plan participants for picnics, fishing, boating, volleyball, and a fishing tournament. The Plan has realized no net income or net loss from the Property because the Property was not purchased as a financial investment but to furnish recreational benefits pursuant to the Plan's provisions.[7]

8. The applicant represents that all of the Personal Property was also purchased in furtherance of the recreational benefits under the Plan and that none of it was purchased from a party in interest with respect to the Plan. The applicant states that no additional capital expenditures for the Personal Property were incurred by the Plan. The above mentioned pontoon boat comprising part of the Personal Property was purchased on June 30, 1987 from Fred Psye Marine for $21,053.83. This is a 1987 Lowe Regency 30-foot pontoon boat with a fair market value of $5,259 as of May 26, 1993, according to James Sewell (Mr. Sewell), of Sewell's Marine, in Pittsburg, Texas. The above mentioned jet ski comprising part of the Personal Property was purchased on August 31, 1986 from Sewell Marine for $3,379.42. This is a 1986 Yamaha Jet Ski 650A X-2, with a fair market value of $1,420 as of May 25, 1993, according to Brad Nicholson (Mr. Nicholson), of Nicholson Yamaha-Suzuki, in Mt. Pleasant, Texas. Both Mr. Sewell and Mr. Nicholson represent that they are not related in any way to the Employer or its principals.

9. The barbecue cooker comprising part of the Personal Property was purchased in 1990 or 1991 from True Value Hardware, Dallas, Texas, for approximately $1,200. The applicant is endeavoring to obtain an appraisal for this cooker. The applicant represents that if an appraisal is unavailable, the proposed sales price to the Employer of the barbecue cooker will be its initial cost.

10. Due to the Plan's need for liquidity (see representation paragraph 4, above), the Plan has attempted to sell the Property for some time. However, because of the depressed state of the Texas economy and Texas real estate, the Plan has not had any purchaser willing to pay what the Plan believes to be fair value for the Property. To provide liquidity to the Plan, therefore, the Employer proposes to purchase the Property for its fair market value on the date of the proposed sale. The applicant represents that the Plan trustee will obtain an updated appraisal of the Facility and an updated appraisal of each of the items of Personal Property as of the date of the proposed sale. The Employer would pay the proposed sales price in a single lump sum cash payment on the date of the proposed sale. The Plan would not pay any commissions or other expenses incurred in effecting the proposed sale. The Employer will bear all attorneys' fees, recordation fees, and title company fees, if any.

The applicant points out that if the proposed transaction is executed, the Plan will have, after the sale, a liquid asset (cash) still subject to the requirements of Treasury regulations section 1.501(c)(9)-4, which prohibits inurement to the employer, or a private

[7] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. In order to act prudently in making decisions relating to providing recreational benefits provided under a plan, plan fiduciaries must consider, among other factors, the availability, risks, administrative feasibility, and advantages and disadvantages to plan participants of alternative types of recreational assets. In this proposed exemption, the Department expresses no opinion as to whether the Plan's acquisition and holding of the Property satisfied the requirements of section 404(a)(1) of the Act.

shareholder or individual other than through the payment of permitted benefits. Thus, a sale of illiquid property at fair market value will not drain funds from the Plan. Further, upon termination of the Plan, pursuant to sections 7.4 and 3.1 thereof, the Plan's funds can be used only to provide benefits to participating employees.

11. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed sale will be a one-time transaction for cash; (b) the sales price will not be less than the fair market value of the Property on the date of the sale; (c) the Plan will not pay any commissions or other expenses incurred in effecting the proposed sale; (d) the Property produces no income for the Plan, which has tried unsuccessfully to sell it for its fair market value to unrelated parties; and (e) the proposed sale will provide the Plan, which is winding down and is in a highly illiquid state, with the cash needed to pay benefits to its participants, who have not made contributions to the Plan.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of October, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–25231 Filed 10–14–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the National Oceanic and Atmospheric Administration (NOAA) field camp at Seal Island, South Shetland Islands, Antarctica, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Peter R. Karasik at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 40 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a banned substance or designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation which covers NOAA's activities in these areas. The permit applicant is:

Applicant Dr. J.L. Bengston, National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115.

The permit application applies to the shore-based research and logistic activities at a small field camp conducted by the NOAA Antarctic Marine Living Resources (AMLR) Program; and the proposed duration of the permit is from December 1, 1993 through June 30, 1998.

Activity for Which Permit Requested—The NOAA AMLR Program involves the use of a temporary, multi-year field camp at Seal Island, South Shetland Islands, Antarctica. The field camp was initially established in the 1986/87 austral summer and is intended to be occupied only during the austral summer by 4 to 6 marine mammal and bird researchers. The waste management permit application addresses the materials involved in maintaining the field camp and three observation blinds and supporting the scientific research at the site.

Peter R. Karasik,

Associate Compliance Manager.

[FR Doc. 93–25325 Filed 10–14–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528]

Palo Verde Nuclear Generating Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–41 issued to Arizona Public Service Company (APS) for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

The proposed amendment would add a methodology supplement entitled, "System 80™ Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed change does not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change is administrative in nature and does not adversely impact the plant's ability to meet applicable regulatory requirements. Therefore, it can be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 15, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner

shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 12th day of October.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25437 Filed 10–14–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Revised Form SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form SF 2823, Designation of Beneficiary—FEGLI, is used by any Federal employee or annuitant covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his/her life insurance when the statutory order of precedence does not meet his/her needs. This form was revised to clarify that designations by guardians or other fiduciaries are not acceptable, to reflect the current form number of the FEGLI booklet, to update OPM's address, and to make other minor language changes.

Approximately 1,000 SF 2823 forms are completed annually. It takes approximately 15 minutes to complete this form. The total annual burden is 250 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before November 15, 1993.

ADDRESS: Send or deliver comments to—

David Lewis, Office of Insurance Programs, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 3415, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–25309 Filed 10–14–93; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

(2) *Form(s) submitted:* RL–231–F.

(3) *OMB Number:* 3220–0107.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* See justification statement.

(9) *Total annual responses:* 600.

(10) *Average time per response:* .5 hours.

(11) *Total annual reporting hours:* 300.

(12) *Collection description:* Under the Railroad Retirement Act, benefits are not payable if an annuitant works for an employer covered under the Act or last non-railroad employer. The request will obtain information on an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–25378 Filed 10–14–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33036; International Series Release No. 589; File No. SR–Amex–93–14]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Changes by the American Stock Exchange, Inc., Relating to the Listing of Index Warrants Based on the Amex Hong Kong 30 Index

October 8, 1993.

I. Introduction and Background

On April 13, 1993, the American Stock Exchange, Inc. ("Amex") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to list warrants based on the Amex Hong Kong 30 Index ("Hong Kong 30 Index" or "Index")—an index comprised of Hong Kong stocks traded on the Stock Exchange of Hong Kong ("HKSE"). The Amex has amended the proposal on two separate occasions, first on April 15, 1993[3] and most recently on September 15, 1993.[4] Notice of the proposal to approve the Index warrants for listing and trading, and Amendment No. 1 thereto, appeared in the **Federal Register** on May 12, 1993 ("Notice").[5] No comments were received on the proposed rule changes set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

The Amex proposes to list index warrants based on the Amex Hong Kong 30 Index, a new index developed and maintained by the Amex and designed to represent a substantial segment of the Hong Kong stock market.

A. Description of Hong Kong 30 Index

The Hong Kong 30 Index, a capitalization-weighted stock index, designed and operated by the Amex, is based on the capitalizations of 30 stocks that are traded on the HKSE and whose issuers have major business interests located in Hong Kong.[6] The HKSE is the primary trading market for 25 of the 30 Index component stocks. The primary trading market for all of the Index component stocks is either Hong Kong or London.[7]

As of June 22, 1993, the total capitalization of the Index was US$157.323 billion. Market capitalizations of the individual stocks in the Index ranged from high of US$23.48 billion to a low of US$549 million, with the median being US$3.89 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of approximately 11.152 billion shares to a low of 463.960 million shares. The price per share of the stocks in the Index, as of June 22, 1993, ranged from a high of US$9.37 to a low of US$0.47. In addition, the average daily trading volume of the stocks in the index, for the six-month period ending May 31, 1993, ranged from a high of 19.369 million shares to a low of 1.027 million shares, with the median being 2.884 million shares.

Business sector representation in the Index as of June 22, 1993 was as follows: (1) Finance (25.78%); (2) property development (23.08%); (3) utilities (19.71%); (4) conglomerates (18.62%); (5) hotel/leisure (4.19%); (6) property investment (4.07%); (7) airlines (2.45%); (8) food retailing (23%); and (9) luxury retailing (.35%).

The highest weighted component stock in the Index accounts for 14.92% of the Index. The five largest Index components account for approximately

[1] 15 U.S.C. 78s (b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] On April 15, 1993, the Amex amended the proposal to require that Amex member firms will be permitted only to sell Index warrants to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. The proposal was also amended to require that discretionary orders in Index warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex to Richard Zack, Branch Chief, Office of Self-Regulatory Oversight, SEC, dated April 15, 1993 ("Amendment No. 1").

[4] On September 15, 1993, the Amex amended the proposal to require that each Index component stock be issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and that has its primary trading market located in a country that the Amex has an effective and comprehensive surveillance sharing agreement with. The Amex has agreed to remove any component stocks failing to meet the above listing and maintenance criteria within 30 days after such failure occurs. In addition, the Amex proposes establishing certain listing and maintenance criteria for Index component stocks, including criteria relating to Index component stock capitalization, share price, trading volume, and trading share free float. The Amex will conduct quarterly reviews to determine compliance with the above criteria and will replace Index component stocks that no longer meet such criteria. The Amex also proposes amending the proposal to require that Index warrant issuers have a minimum tangible net worth in excess of $150,000,000 and otherwise substantially exceed the earnings requirements set forth in section 101(A) of the Amex Company Guide. Additionally, the Amex proposes prohibiting the listing and trading of Index warrants where the original issue price of all an issuer's Hong Kong stock market based index warrants (including offerings by affiliates of the issuers) listed on a national securities exchange or traded through the facilities of NASDAQ is greater than 25% of the warrant issuer's net worth. This criteria will apply regardless of whether the issuer has hedged its financial obligations resulting from such warrant issuances. The Amex also proposes amending the proposal to require that Index warrants will be margined as though they were options contracts subject to Amex Rule 462(d). See letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC dated September 15, 1993 ("Amendment No. 2").

[5] See Securities Exchange Act Release No. 32269 (May 5, 1993), 58 FR 28071.

[6] The Amex has represented that it will not include in the Index any component stock whose issuer is an entity formed and governed under the laws of the People's Republic of China. See letter from Nathan Most, Senior Vice President, New Products Development, Amex to Richard Zack, Division of Market Regulation, SEC dated September 7, 1993.

[7] See letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC dated September 13, 1993

45.86% of the Index's value. The lowest weighted component stock comprises .35% of the Index.

B. Maintenance

The Index will be maintained by the Amex and will contain at least thirty component stocks at all times. In addition, the component stocks in the Index must meet certain listing and maintenance standards as discussed below. The Amex may change the composition of the Index at any time in order to more accurately reflect the composition and track the movement of the Hong Kong stock market. Any replacement component stock must also meet the component stock listing and maintenance standards as discussed below. Further, the Amex may replace Index component stocks in the event of certain corporate events, such as takeovers, or mergers, that change the nature of the security. If the number of components stocks in the Index falls below thirty, no new series of warrants based on the Index will be listed for trading unless and until the Commission approves a rule filing pursuant to section 19(b) of the Act reflecting such change.

C. Eligibility Standards for the Inclusion and Maintenance of Component Stocks in the Index

The Amex states that it selects securities comprising the Index on the basis of their market weight, trading liquidity, and representation of the business industries reflected on the HKSE. The Amex will require that each Index component stock be one issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and have its primary trading market located in a country that the Amex has an effective surveillance sharing agreement with. The Amex will remove any component stocks failing to meet the above listing and maintenance criteria within 30 days after such failure occurs. In order to ensure that the Index does not contain a large number of thinly-capitalized, low-priced securities with small public floats and low trading volumes, the Amex has also established additional qualification criteria for the inclusion and maintenance of equity securities in the Index, based on the following standards: (1) All component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily capitalization, as calculated by the total number of shares outstanding times the latest price per share (in Hong Kong dollars), measured over the prior 6 month period, of at least 3 billion Hong Kong dollars (approximately US$380 million); (2) all component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily closing price, measured over the prior 6 month period, not lower than 2.50 Hong Kong dollars (approximately US$0.32); (3) all component securities selected for inclusion in the Index must have, and thereafter maintain, an average daily trading volume, measured over the prior 6 month period, of more than 1 million shares per day, although up to, but no more than, three component securities may have an average daily trading volume, measured over the prior 6 month period, of less than 1 million shares per day, but in no event less than 500,000 shares per day; and (4) all component securities selected for inclusion in the Index must have, and thereafter maintain, a minimum free float value (total freely tradable outstanding shares minus insider holdings), based on a monthly average measured over the prior 3 month period, of US$238 million, although up to, but no more than, three component securities may have a free float value of less than US$238 million but in no event less than US$150 million, measured over the same period. The Amex will review and apply the above qualification criteria relating to Index component stocks on a quarterly basis, conducted the last business day in January, April, July, and October (beginning January 1994). Any Index component stock failing to meet the above listing and maintenance criteria will be reviewed on the second Friday of the second month following the quarterly review to again determine compliance with the above criteria. Any Index component stock failing this second review will be replaced by a "qualified" Index component stock effective upon the close of business on the following Friday provided, however, that if such Friday is not a business day, the replacement will be effective at the close of business on the first preceding business day. The Amex will notify its membership immediately after it determines to replace an Index component stock.

D. Calculation and Settlement of Index

The Index is calculated by multiplying the price of each constituent stock of the Index (in Hong Kong dollars) by the number of shares outstanding. For valuation purposes, one Index unit (1.0) is assigned a fixed value of one U.S. dollar. The Index level was set at a value of 350.00 on June 25, 1993 by dividing the total market value of the component stocks at the close of business on that date (HK$1,152,829,149,500) by an initial Index divisor of 3,293,797.57.[8] The Index level as of September 7, 1993 was 374.78. The Amex will calculate the Index once each day based on the nearest previously reported closing prices on the HKSE.[9] In the event that a security does not trade on a given day, then the previous day's last sale price is used. In the event that a given security has not traded for more than one day, then the last sale price on the last day on which the security was traded is used. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events such as stock splits, stock replacements, or other actions which would otherwise cause a discontinuity in the Index value.

Pricing of the Index will be performed each day and be disseminated before the opening of trading via the Consolidated Tape Association Network-B continuously during each New York business day. Thus, the last computed Index value will be publicly available throughout the trading day to vendors and subscribers in exactly the same way as other Amex calculated indexes are made available to the general investing public. The dissemination value, however, will remain the same throughout the trading day because the trading hours of the HKSE do not overlap with Amex trading hours. Accordingly, updated price information is unavailable.

The Index value for purposes of settling outstanding Index warrants upon expiration will be calculated based on the closing sale prices for each of the Index's component stocks on the HKSE on the last trading day prior to expiration.

E. Warrant Listing Standards and Customer Safeguards

The Exchanges propose to trade Hong Kong 30 Index warrants pursuant to section 106 of the Amex Company Guide ("Section 106"). Under Section 106, the Amex may approve for listing warrants based on established foreign and domestic market indices. The Commission has previously approved the listing and trading on the Amex of certain foreign index warrants based on the Nikkei Stock Average,[10] the FT–SE

[8] The Amex selected the particular divisor number in order to ensure that the Index was set at a general price level consistent with other well recognized stock market indexes and at a level so that derivative products based upon the Index could be attractively and competitively priced.

[9] The trading hours at the HKSE do not overlap with trading hours at the Amex.

[10] Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376.

100 Index,[11] and the CAC-40 Index,[12] all listed in accordance with Section 106.

The Amex represents that the Index warrant issues will conform to the index warrant listing guidelines contained in Section 106. Specifically, the listing guidelines of the Amex will require that: (1) The issuer of the warrants shall have a minimum tangible net worth of $150 million and that the aggregate value of all of a particular issuer's Hong Kong stock market based Index warrant offerings (combined with offerings by its affiliates) that are listed on a national securities exchange or on NASDAQ should not exceed 25% of the issuer's net worth, irrespective of whether the issues are hedged; [13] (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Amex has proposed applying the same margin treatment as it requires for Amex listed options, as set forth in Amex Rule 462(d), to the purchase of Index warrants.

The Amex also proposes that the Hong Kong 30 Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Hong Kong 30 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Amex has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index options. First, the Exchange proposes requiring that Index warrants only be sold to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. Second, the Exchange's options suitability standards will apply to recommendations regarding Index warrants.[14] Third, the Exchange will also require that discretionary orders in Index warrants must be approved and initialed on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Finally, the Amex, prior to commencement of trading of Index warrants, will distribute a circular to their membership calling attention to the specific risks associated with warrants on the Index.[15]

III. Discussion

The Index warrants are the first derivative instruments to be traded on a U.S. exchange that are based on a stock index comprised exclusively of Hong Kong stocks. The Commission believes that the availability of warrants on the Index is consistent with section 6(b)(5) of the Act in that it should help remove impediments to a free and open securities market and facilitate transactions in securities because the Index warrants will provide investors a means by which to hedge against investment decisions made in the Hong Kong equity market and provide a surrogate instrument for trading in the Hong Kong securities market.[16] In particular, Hong Kong 30 Index warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the Hong Kong 30 Index moves in a favorable direction within a specified time period. Of course, if the Hong Kong 30 Index moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the Hong Kong 30 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Hong Kong equity market.

Nevertheless, the trading of warrants on the Index raises several concerns, namely issues related to customer protection, index design, surveillance and market impact. The Commission believes, for the reasons discussed below, that the Amex has adequately addressed these concerns.

A. Customer Protection

Due to the derivative nature of index warrants, the Commission believes that Hong Kong 30 Index warrants should only be sold to investors capable of evaluating and bearing the risks associated with trading in such instruments and that adequate risk disclosure be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchange that address the special concerns attendant to the secondary market trading of index warrants will be applicable to the Hong Kong 30 Index warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Amex has addressed adequately potential public customer problems that could arise from the derivative nature of Hong Kong 30 Index warrants. Moreover, the Amex plans to distribute a circular to its members identifying the specific risks associated with warrants on the Hong Kong 30 Index and, pursuant to the Amex's listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue Hong Kong 30 Index warrants.

B. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Hong Kong equities market. First, the Index consists of 30 actively traded stocks traded on the HKSE. Second, the total capitalization of the Index, as of June 22, 1993, was US$157.323 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of US$23.48 billion to a low of US$549 million, with a median value of US$3.89 billion. Third, the Index includes stocks of companies from a broad range of industries and no industry segment comprises more than 25.78% of the Index's total value. Fourth, no single stock comprises more than 14.92% of the Index's total value and the percentage weighting of the 5

[11] Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380.

[12] Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792.

[13] Section 106 of the Amex Company Guide only requires warrant issuers to have $100,000,000 of assets. The Amex has amended its rule proposal to include the above stated heightened issuer standards for Hong Kong Index warrants. See Amendment No. 2, note 4, *supra*.

[14] See Amex Rule 923.

[15] The Exchange has agreed to provide a draft of the Hong Kong Index warrant information circular for the Commission's review prior to its dissemination to members. See letter from Nathan Most, Amex to Richard Zack, SEC dated September 7, 1993.

[16] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

largest issues in the Index accounts for 45.86% of the Index's value. Fifth, the Index component stock listing and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the Hong Kong stock market.[17] Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation.[18] It is for this reason that the Commission requires that there be a surveillance sharing agreement[19] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables officials to surveil trading in the derivative product and its underlying stocks.[20] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

To address the above noted concerns, the Amex has entered into a surveillance sharing agreement with the Hong Kong Stock Exchange that provides for the exchange of information relating to the trading of Hong Kong 30 Index warrants on the Exchange and trading in the component securities of the Index on the Hong Kong Stock Exchange. The agreement, among other things, provides for the sharing of time and sales information, clearing data, and the identity of persons who have bought or sold securities. This agreement obligates the Amex and HKSE to compile and transmit all relevant market surveillance information and to resolve in "good faith" any disagreements regarding requests for information in response thereto. In addition, the Amex has represented that if information pursuant to the surveillance sharing agreement is not promptly forthcoming from the HKSE, the Index will be removed from trading on the Amex.[21]

The Commission believes that the surveillance sharing agreement entered into between the Amex and HKSE adequately addresses its concerns relating to the ability of the Amex to detect and deter manipulation of the Index through the use of the Index component stocks.[22]

D. Market Impact

The Commission believes that the listing and trading of Hong Kong 30 Index warrants on the Amex will not adversely impact the securities markets in the U.S. or Hong Kong. First, The existing index warrant surveillance procedures of the Amex will apply to warrants based on the Index. Second, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded on the HKSE. Third, the Commission notes that at the present time, index options and futures contracts based on another Hong Kong stock market index, the Hang Seng Index, are traded on Hong Kong securities and futures exchanges, and that numerous warrant and off-exchange options based on the Hang Seng Index and other Hong Kong related indexes are traded worldwide. Accordingly, the Commission does not believe that the introduction of Hong Kong 30 Index warrants by the Amex will have a significant effect on the underlying Hong Kong securities market.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** First, Amendment No. 2 provides additional requirements to the proposal that each Index component stock be issued by an entity with major business interests in Hong Kong, listed for trading on the HKSE, and have its primary trading market located in a country that the Amex has an appropriate information sharing agreement with. Additionally, the amendment establishes listing and maintenance criteria relating to Index component stock capitalization, share price, trading volume and trading share free float. Amendment No. 2 also provides for the removal of any Index component stocks that do not meet these requirements. Such requirements strengthen the proposal by helping to ensure that the Index is comprised of highly capitalized and liquid Index component stocks that have a close nexus to the Hong Kong securities market and that have adequate surveillance information available regarding the trading in such securities. Amendment No. 2 also provides for the application of heightened Index warrant issuer listing standards regarding Index warrants and requires that options margin rules be made applicable to the Index warrants. These amendments also strengthen the proposal by increasing the financial requirements of Index warrant issuers and ensuring that

[17] The Amex has represented that the companies included in the Index represent at least thirty different broad categories of business covering almost the entire range of business activity conducted in Hong Kong. See letter from Nathan Most, Senior Vice President, New Products Development, Amex to Richard Zack, Branch Chief, Options Branch, Division of Market Regulation, SEC dated August 17, 1993.

[18] The Commission also notes that the Amex will apply its existing index warrant surveillance procedures to trading in Hong Kong 30 Index warrants.

[19] The Commission believes that a surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. See Securities Exchange Act Release No. 31529 (November 27, 1992).

[20] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement. See Securities Exchange Act Release No. 31529, note 18, *supra*.

[21] If, in the event that the HKSE denies a request for assistance pursuant to the surveillance sharing agreement and the failure to provide assistance is material to the Amex's self-regulatory effort, the Amex will immediately attempt to implement alternative arrangements for sharing surveillance information with other appropriate self-regulatory and/or governmental authorities. If, despite these efforts, the Amex still is unable to implement such alternative arrangements and determines that it is unable to obtain specific surveillance information pursuant to its agreement with the HKSE which is necessary to carry out its regulatory functions, it will consult with the SEC regarding appropriate regulatory responses. Appropriate regulatory responses in this situation could include the "winding-down" of trading in any options where an information sharing agreement with the HKSE is necessary to ensure the integrity of the market and the SEC advises the Exchange in writing that the public interest and the protection of investors requires the "winding-down" of trading. Such "winding-down" process would involve the cessation of listing any new series, and the delisting of any series where there is no open interest. See letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex to Richard Zack, Branch Chief, Division of Market Regulation, SEC dated August 27, 1993.

[22] The Commission also notes that the Amex has proposed an additional surveillance related safeguard to the Index by requiring that the primary trading market for all Index component stocks must be located in a country that the Amex has an effective and comprehensive surveillance sharing agreement with. *See* Amendment No. 2, note 4, *supra*.

adequate margin levels will be applied to Index warrants, respectively. Collectively, the amendments help to increase investor protections regarding the trading of Index warrants. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copiers of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-93-14 and should be submitted by November 5, 1993.

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[23]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR-Amex-93-14), including Amendment No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25327 Filed 10-14-93; 8:45 am]

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[23] 15 U.S.C. 78f(b)(5) (1982).

[24] 15 U.S.C. 78s(b) (1982).

[25] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33028; File No. SR-AMEX-92-15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Guidelines for Equity Specialists Regarding their Use of Options to Hedge Positions in their Specialty Stocks

October 6, 1993.

I. Introduction

On May 18, 1992, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to liberalize Exchange Rule 175 governing the trading by equity specialists in options overlying their specialty stocks. Specifically, the proposed rule change would provide equity specialists greater flexibility in the use of various options hedging strategies.[3]

The proposed rule change was published for comment and appeared in the **Federal Register** on July 9, 1992.[4] No comments were received on the proposed rule change. This order approves the proposal.

II. Background

In 1935, at the request of the Commission, all national exchanges adopted rules that prohibited any specialist from acquiring, holding or granting any interest in an option on any of his specialty stocks. Adoption of these prohibitions against equity specialists' transactions in options was a result of certain abuses associated with options granted to specialists and other floor traders. These abuses consisted of the formation of "pools" by specialists and others for the purpose of manipulating the specialists' specialty stocks. The use of options by specialists with respect to their specialty stocks was found to be an integral part of many of these manipulative operations.[5]

In 1976, however, the Commission approved proposals by several regional stock exchanges to allow stock specialists on these exchanges to take positions—not limited to hedging positions—in listed options on their specialty stocks.[6] In approving these proposals, the Commission stated that each regional exchange's market share was so small that regional exchange specialists' informational advantages or manipulative abilities appeared relatively insignificant.

In 1985, the Commission approved the current version of AMEX Rule 175, which, as described in detail below, permits the use by AMEX specialists of options on their specialty stocks subject to certain limitations and restrictions.[7] The Commission, in approving the current version of Rule 175, cautiously balanced the regulatory concerns regarding possible stock/option manipulation and the specialists' perceived informational advantages against the benefits to the market to be derived from the Rule, namely enhanced market depth and liquidity. After performing this analysis, the Commission determined that the use of options by AMEX specialists would result in substantial benefits to the markets for these stocks as well as the options markets. In making this determination, the Commission took into consideration the AMEX's surveillance plan and limitations imposed by the Rule and concluded that the benefits of the Rule outweighed the regulatory concerns raised by the Rule.

In addition, when approving the current version of Rule 175, the Commission stated that based on the NYSE Approval Order "substantial benefits to the markets for the specialists' speciality stocks, and possibly to the market for the related

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1993).

[3] In 1985, the Commission approved the current version of Rule 175. See Securities Exchange Act Release No. 22670 (November 27, 1985), 50 FR 49808 ("AMEX Rule 175 Approval Order"). The AMEX rule mirrors the New York Stock Exchange, Inc. ("NYSE") Rule 105 that was approved in February 1985. See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 ("NYSE Approval Order"). NYSE Rule 105 was later amended to provide greater flexibility for equity specialists using options trading strategies. See Securities Exchange Act Release No. 28971 (March 13, 1991), 56 FR 11808. The Amex proposal is substantially similar to the recent changes adopted in NYSE Rule 105.

[4] See Securities Exchange Act Release No. 30872 (June 30, 1992), 57 FR 30515. The AMEX subsequently corrected its filing to delete language that was added inadvertently regarding the permissibility of integrated market making. See letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, AMEX, to Jeffrey Burns, Division of Market Regulation, SEC, dated August 27, 1992.

[5] Congress gave the Commission plenary authority to regulate exchange options trading under Sections 9 (b) and (c) of the Act. For a complete description of the abuses that led to the prohibition against specialists' and other floor professionals' use of options, see S. Rep. No. 1455, 73rd Cong., 2d Sess. (1934) ("Pecora Commission report").

[6] See Securities Exchange Act Release Nos. 13016 (November 30, 1976), 41 FR 53383 (Philadelphia Stock Exchange); 13044 (December 8, 1976), 41 FR 54783 (Midwest Stock Exchange); and 13269 (February 16, 1977), 42 FR 10754 (Pacific Stock Exchange).

[7] See AMEX Rule 175 Approval Order, supra note 3.

options themselves, were likely to accrue." [8] The Commission believed that its findings made in connection with the NYSE Approval Order were equally applicable to the Amex proposal which adequately addressed regulatory and surveillance concerns raised by the Commission. In the NYSE Approval Order, the Commission further explained that it "would be prepared to reconsider [the design of the Rule] if evidence suggests that relaxation of certain of the NYSE's proposed restrictions was appropriate." [9] Based on the small number of specialist units who have used options to hedge their specialty stock positions, [10] the Exchange believes the cautious approach taken by the Commission and the Exchange with respect to the use of options by equity specialists has apparently proven to be unduly restrictive. Accordingly, the AMEX has filed the present proposal to relax and expand certain provisions of Rule 175 in an effort to broaden the use of options by AMEX equity specialists so that the market benefits originally contemplated when the Rule was approved can be more fully realized.

III. Description of the Proposal

AMEX Rule 175 currently allows a specialist to acquire and hold, in his specialist trading account, a position in listed options [11] on any of his specialty stocks "where appropriate * * * to offset the risk of making a market in the underlying stock." Under the Rule, a specialist may not establish and maintain an options position which is excessive either in terms of his existing position in the underlying specialty stock or in terms of a reasonable estimate of potential losses that may be incurred in relation to any such equity position.

The Rule also provides that any such options transactions must be made in accordance with the "Guidelines for Specialists' Specialty Stock Option Transactions pursuant to Rule 175" ("Guidelines"). The Guidelines reiterate the restrictions contained in Rule 175 and provide guidance on the application of the Rule. Specifically, the Guidelines require that an opening options transaction by a specialist must:

(1) Result in an options position "entirely on the opposite side of the market from the underlying specialty stock position;" [12]

(2) Be established "solely to offset the risk of making a market in the underlying specialty stock;" and

(3) Result in an options position that does not exceed the number of contracts permitted by specified "hedge ratios." [13]

The Guidelines to Rule 175 set forth the permissible options positions that a specialist may establish and maintain for the purpose of hedging risks associated with holding specialty stocks. A specialist is deemed to be in violation of existing Rule 175 if any of the following three events occur: (1) He establishes an options position in excess of permitted "hedge ratios;" (2) he fails to make a timely liquidation of an options position when required; or (3) regardless of compliance with the Guidelines, he has engaged in options transactions for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock. To uphold the timely liquidation requirement, the specialist must: (1) Liquidate his excess options position within two hours if the stock position decreases by more than 25% and results in an offsetting options position that exceeds the hedge ratios but is on the opposite side of the market from the stock position; or (2) liquidate the excess options position within one hour if the options position becomes on the same side of the market as the stock position. The Rule 175 Guidelines do, however, provide for a de minimis exception to the liquidation requirements for 10 or fewer options contracts.

In the current filing, the AMEX proposes to amend its Rule 175 to provide equity specialists with greater flexibility in using options by allowing them to use any legitimate options hedging strategy to offset the risks of making a market in their specialty stocks, as long as the resulting net option position is on the opposite side of the market from the underlying stock position. In addition, the proposal will allow specialists the choice of using either (1) fixed hedge ratios, [14] (2) "dynamic deltas" [15] or (3) any other legitimate hedging strategy approved by the Exchange, to determine the number of permitted options contracts that an equity specialist may hold for the purpose of hedging the specialist's existing specialty stock position.

The proposed amendments to Rule 175 retain the liquidation requirements for options positions that become overhedged or where the net option position becomes on the same side of the market as the underlying stock position. [16] The proposal, however, would change the time frame for liquidation. For a net option position which becomes overhedged by a change in the specialist's stock position of at least 25%, and remains on the opposite side of the market from the underlying stock position, the specialist would be required to enter a liquidation order by the close of trading on the day after the position becomes overhedged. For a net option position which becomes on the same side of the market as the underlying stock position, the liquidation order must be entered by the close of trading on the same day. The de minimis exception to the liquidation requirements would be expanded to include options contracts which offset the equivalent of 5,000 shares of a specialty stock position (an increase from 10 to 50 contracts).

The proposal would further facilitate "calendar rollovers" [17] by permitting a specialist to establish and hold an overhedged position (both near term and more distant term options) for a limited period of time (until the close of trading on the next trading day after the position in the far-out series is established) in order to effectuate a calendar rollover. This will provide a specialist with added flexibility while executing a rollover and remove the risk of becoming "unhedged" should there be a temporary absence of liquidity in the options market as the specialist seeks to liquidate one options position and establish another.

In addition, the proposal would permit a specialist to establish a long-

[8] Id.

[9] See NYSE Approval Order, supra note 3, at 50 FR 5714.

[10] Currently, only one specialist unit is periodically using stock options to hedge its specialty stock positions.

[11] A list option is an option issued by the Options Clearing Corporation ("OCC") and traded on a national securities exchange.

[12] Therefore, a specialist may purchase puts or sell calls if he is long the underlying specialty stock, and may purchase calls or sell puts if he is short the underlying specialty stock. Gains or losses in "opposite-side" options positions will offset or hedge, in whole or in part, gains or losses in the stock position being offset. In contrast, gains or losses in "same-side" options positions amplify the effects of gains or losses in the underlying stock. Therefore, the rule as currently in place forbids the establishment of spreads, straddles or similar combination options positions.

[13] The "hedge ratios" are 1 to 1 in the case of "in-the-money" options, 1.5 to 1 in the case of "at-the-money" options and 2 to 1 for "out-of-the-money" options. Accordingly, for each 100-share stock position, the corresponding number of options contracts that can be acquired depends on whether such option is "in-the-money," "at-the-money" or "out-of-the-money."

[14] See supra note 13.

[15] The "delta" of an option is the amount by which an option's price will change in response to change of $1 in the price of the underlying security. The Exchange will select a pricing model to determine the appropriate delta for each option series.

[16] See supra note 12 and 13.

[17] A "calendar rollover" is a method whereby a market participant replaces an options position that is about to expire with a position in a farther out series.

term options position, irrespective of his actual stock position when the long-term options position is established, provided that he uses "out-of-the-money" options that are not near term and provided that the strategy is intended to offset general market making risk. Prior approval from the Exchange would be required before a specialist could engage in such a strategy. The specialist would also be exempted from any liquidation requirements as to this options position. However, if the specialist were to deviate from the approved strategy, he would no longer be exempt from the liquidation provisions.

IV. Discussion

As described below, the Commission finds that the AMEX proposal is designed "to prevent fraudulent and manipulative acts and practices" and, in general, "to protect investors and the public interest," and, therefore, is consistent with the requirements of the Act applicable to a national securities exchange, and, in particular, section 6(b)(5).[18] In determining whether to approve the amendments to Rule 175 in 1985, the Commission weighed the potential benefits of the Rule against possible regulatory concerns, namely increased opportunity for stock/option manipulation or exploitation by specialists of their informational advantages. The Commission found that the use by AMEX equity specialists of options on their specialty stocks "will offer substantial benefits to the markets for these stocks and possibly to the market for the related options themselves." [19] The Commission also found that, taking into consideration the AMEX's surveillance plans, the proposal adequately addressed possible regulatory concerns. After analyzing the rule change now being proposed, the Commission again concludes that the benefits to be derived from the Rule, as modified, outweigh any regulatory concerns.

Rule 175 as revised will provide AMEX equity specialists greater flexibility in using listed options as a hedge in order to offset market-making risk. Accordingly, the Commission finds that the proposal has the potential to enable specialists to add to overall stock market liquidity and depth by taking specialty stock positions they might not otherwise assume or by reducing risks on positions they are required to assume. This, in turn, also could contribute to greater overall depth and liquidity in the options markets.

In this regard, the proposal is consistent with studies of market performance that have been issued since the October 1987 market break.[20] In view of the market environment of the past several years which has been subject to periodic outbursts of extreme one-day volatility, it is important that specialists have the ability to offset their risks in an effective and efficient manner. Due to the increased volatility of the market, substantial demands are placed on specialists from time to time to act as dealers to cushion sharp intra-day fluctuations in supply and demand in order to maintain fair and orderly markets in their specialty stocks. The proposed modifications to certain provisions in AMEX Rule 175 should provide equity specialists more flexibility in their use of options to hedge their market making activities, allow equity specialists to hedge their specialty stock positions more efficiently, and allow specialists to commit more market making capital during periods of market stress.

In addition, the proposed rule change is a reasonable response to suggestions made by the NYSE's Market Volatility and Investor Confidence Panel. The Panel, headed by former General Motors Chairman Roger Smith and composed of individuals from major U.S. corporations, the securities and futures industries, and the academic community, recommended that:

> proposals to increase liquidity be considered by the NYSE, as well as other markets where equities and equity derivatives are traded. One promising idea is to enhance the ability of specialists at the NYSE to provide liquidity to the market by encouraging them to hedge their positions using options in individual stocks. *Such hedges are made virtually impossible by current rules, which the Panel recommends relaxing, if adequate safeguards are in place to protect against frontrunning and manipulation.*" [21] (*Emphasis added*)

While salutary in these respects, the proposed modifications of options hedging restrictions present concerns about the increased potential for specialists to engage in intermarket abuses. First, the Commission is concerned that greater flexibility in the use of listed options on specialty stocks could be abused for "mini-manipulation" [22] and other stock/option manipulation purposes. Second, the Commission is concerned that AMEX specialists may be able to use options to exploit their "informational advantages" in the underlying stock market. Moreover, the central position of the specialist often dictates that he is consulted by off-floor participants prior to their execution of large trades. Accordingly, it is conceivable that a specialist could be motivated to engage in options transactions to capitalize on informational advantages rather than to offset marketing-making risk.

The Commission, as it did in the original AMEX Rule 175 Approval Order, however, concludes that the AMEX proposal to amend Rule 175 appropriately addresses these concerns. Considering the proposed rule change as a whole, the ability of specialists to use options for abusive purposes is unlikely as a result of the proposed Rule 175 restrictions which limit an options hedging strategy to a net option position on the opposite side of the market from the specialty stock position and require that all options trading activity be related to offsetting market making risk. Any gains in opposite side options positions should be offset by losses in the underlying stock position. In addition, the Commission notes that the reporting and record keeping requirements of the Guidelines are left unchanged by the proposal.[23] Moreover, the proposal leaves intact a provision of the Guidelines specifically highlighting the prohibition against the frontrunning of blocks by specialist.[24] Finally, the AMEX has surveillance procedures in place that are designed to detect and deter stock/options manipulations.

The Commission believes that the specific modifications proposed by the AMEX—permitting AMEX specialists to use "dynamic delta" options hedging strategies, expanding the time frames for

[18] 15 U.S.C. 78f(b)(5) (1982).

[19] AMEX Rule 175 Approval Order, supra note 3, 50 FR at 49808.

[20] *Report of the Presidential Task Force on Market Mechanisms* at 49–50, Study VI at 39–47 (January 8, 1988) ("Brady Report"); Division of Market Regulation, *The October 1987 Market Break* at 4–1 to 4–29 (February 1988) ("Market Break Report"); NYSE, *Report on Market Volatility and Investor Confidence* at 6, Appendix D at 6–7 (June 7, 1990) ("NYSE Report"); Division of Market Regulation, *Market Analysis of October 13 and 16, 1989* at 16–26, 33–34 (December 1990).

[21] See NYSE Report supra note 20, at 6.

[22] A mini-manipulation involves an effort by a trader over a short period of time to move the price of a stock to benefit a previously established options position. Once the price of the stock has moved up or down, the trader seeks to liquidate the options position at a profit.

[23] A specialist is required under Rule 175 to report all accounts in which he has an interest and in which are effected options transactions in any of his specialty stocks. The reporting of options transactions by each specialist is also mandated by the Exchange. In addition, specialists are required to establish a separate "memo" account to track options positions relating to the specialist's equity account. The underlying specialty stock position is also recorded in this "memo" account.

[24] See Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (SR–AMEX–87–28; SR–CBOE–87–52; SR–NYSE–87–36; SR–PSE–87–26; SR–PHLX–87–29; and SR–NASD–87–45).

the liquidation of overhedged or same side options positions overlying specialists' specialty stock positions, raising the de minimis exception to the liquidation requirements, and allowing an overhedged position to facilitate "calendar rollovers"—are reasonable and appropriate means to encourage specialists to offset the risks of assuming dealer positions in specialty stocks through the use of limited options positions and strategies.

The AMEX proposal to expand the use of options hedging by equity specialists by authorizing various options strategies, such as "dynamic deltas,"[25] as long as the net option position is on the opposite side of the market from the underlying stock position, is a more sophisticated and sound approach than fixed hedge ratios to provide specialists with adequate hedging capability. The use of dynamic deltas will enable specialists to hedge their positions more precisely and in line with options pricing theories.

The expansion of the time frames for the liquidation of overhedged options positions or those options positions which become on the same side of the market as the underlying stock position reasonably addresses the practical problem specialists encounter under the existing liquidation parameters of having to constantly adjust their options positions in response to changing stock positions. At the same time, the liquidation time frames are not so lengthy as to enable specialists to easily circumvent the requirement that the options positions only be used for hedging purposes.

By raising the de minimis exception to the liquidation requirements to include options contracts which offset the equivalent of 5,000 shares of a specialty stock position, the AMEX has sought to increase specialists' flexibility in unwinding options hedge positions after a change in the underlying specialty stock position. Increasing the de minimis exception of AMEX Rule 175 by a multiplier of five to 5,000 shares of a specialty stock position is warranted due to the greater share volume since 1985[26] and the positions the specialist must hold as a result of escalating market volatility.[27] In addition, granting a larger de minimis exception will provide the specialist with the necessary flexibility to maintain a fair and orderly market in his underlying specialty stock. The existing exception for options contracts which offset the equivalent of 1,000 shares of a specialty stock position is too small in the context of market conditions characterized by extreme one-day volatility and intra-day price swings. It is more reasonable in constructing a de minimis exception to reflect the present market conditions to expand the exception to 50 options contracts or options representing 5,000 underlying shares. This size is still small enough to prevent a specialist from acquiring a large, unhedged position in options.

The AMEX proposal would further permit specialists to establish and hold an overhedged position in both near-term and more distant term options series until the close of trading on the next trading day after a "calendar rollover" is concluded. The Commission believes this exception to the specialist hedging rules is appropriate and reasonable because it provides specialists with the flexibility to roll positions in a cost-efficient manner, while at the same time removing the risk of becoming "unhedged" during the execution of a rollover to a farther-out options series.

The final component of the AMEX proposal would permit a specialist, with prior Exchange approval, to establish a long-term options position using far-term "out-of-the-money" options. Based on this proposal, a long-term option position could be established regardless of the specialist's actual stock position, provided the strategy is intended to offset general market making risk. For a number of reasons, the Commission believes this proposal by the Exchange is a reasonable alternative to allow specialists to hedge their market making risks through the purchase of options, while not presenting additional opportunities for a specialist to take advantage of any informational benefit or engage in stock/option manipulation. First, Exchange approval is required in order to establish the long-term options position. Accordingly, the specialist must present, and the Exchange must approve the specific hedging technique. Moreover, the Exchange will be able to surveil whether the specialist deviated from the specific strategy. Second, information with respect to short-term market movements would tend not to benefit a specialist establishing a long-term "out-of-the-money" option position. The deltas for these options are usually low, so that a one point move in the stock would result in a much smaller move in the option. Third, the use of an Exchange-approved, long-term options strategy will have to be strictly for hedging purposes to offset market-making risk. Accordingly, the Commission finds that the use of long term "out-of-the-money" options to offset market-making risk without liquidation time frames is an acceptable alternative hedging strategy for specialists.

In conclusion, the Commission finds that the proposed expanded use of listed options by AMEX equity specialists to hedge positions in their specialty stocks will offer substantial benefits to the markets for these stocks. The Commission further finds that the proposal adequately addresses the regulatory concerns of stock/option manipulation and specialist informational advantages. In sum, the benefits of the proposal outweigh any regulatory concerns raised by an expanded use of options by equity specialists to hedge their specialty stock positions.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR-AMEX-92-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

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[25] A dynamic delta strategy involves constantly changing the mix of options used to hedge stock positions. This strategy is one of several dynamic hedging strategies which requires rebalancing a market portfolio to increase or decrease with the proportion of equity exposure depending on market movements. Frequent adjustments of the hedge over time and changes in the value of the portfolio are facilitated through the relationship of the option price and underlying stock exhibited in a "delta." See, supra, at note 15.

[26] AMEX Fact Books indicate that average daily share volume for the years 1985–1992 was as follows:

1985—8.3 million shares
1986—11.7 million shares
1987—13.8 million shares
1988—9.9 million shares
1989—12.4 million shares
1990—13.1 million shares
1991—13.3 million shares
1992—14.1 million shares

[27] Currently, AMEX Rule 175 provides a de minimis exception to the liquidation requirements as to an option position of 10 or fewer contracts, which generally would offset the equivalent of 1,000 shares of an underlying specialty stock.

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33027; File No. SR-BSE-93-16]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1993, as subsequently amended on September 13, 1993,[1] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks a twelve-month extension of its Specialist Performance Evaluation Program ("SPEP").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to incorporate certain objective measures into the Exchange's SPEP. The evaluation program, using the BEACON system,[3] looks at all incoming orders routed to a specialist for execution. A record of all action on these orders is accumulated in a separate file, from which four calculations are run.

Selection criteria for eligible orders include regular buy and sell market and marketable limit orders only. Orders marked buy minus or sell plus are excluded, as are crosses and all orders with qualifiers (e.g., market-on-close, stop, stop limit, all or none, etc.). The order entry date must equal the order execution date.

For each of the measures, including the Specialist Performance Evaluation Questionnaire ("SPEQ"), a ten-point scale will be applied to a range of scores. Based on the raw score for each measure, the respective specialist will receive an associated score between one and ten points, which will be weighted as indicated for each measure.

The first measure is Turnaround Time, which calculates the average number of seconds for all eligible orders, based on the number of seconds between the receipt of a guaranteed market or marketable limit order (i.e., for 1,299 shares or less)[4] in BEACON and the execution, partial execution, stopping or cancellation of the order. An order that is moved from the auto-ex screen to the manual screen will accumulate time until executed, partially executed, stopped or cancelled. This calculation will not be in effect until the individual stock has opened on the primary market. Certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the calculation. A specialist who averaged a raw score of 25 seconds will receive 7 points since it falls in the 21 to 25 second range. This calculation will comprise 15% of the overall evaluation program.

TURNAROUND TIME

Time in seconds	Points
1–10	10
11–15	9
16–20	8

TURNAROUND TIME—Continued

Time in seconds	Points
21–25	7
26–30	6
31–35	5
36–40	4
41–45	3
46–50	2
51 and up	1

The second measure is Holding Orders Without Action, which measures the number of market and marketable limit orders (all sizes included)[5] that are held without action for greater than twenty-five (25) seconds. As in the Turnaround Time calculation, a stop, cancellation, execution or partial execution stops the clock. The same exclusions which apply in the Turnaround Time calculation also apply here.[6] Thus if a specialist receives a total of 100 market and marketable limit orders and holds ten (10) of them for more than 25 seconds, his/her raw score of 10% would receive 9 points since it falls in the 6 to 10 percent range. This calculation will comprise 15% of the overall evaluation program.

HOLDING ORDERS WITHOUT ACTION

Percentage of orders	Points
0–5	10
6–10	9
11–15	8
16–20	7
21–25	6
26–30	5
31–35	4
36–40	3
41–45	2
46 and up	1

The third measure is Trading Between the Quote, which measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛th. Thus if a specialist receives ten market and marketable limit orders where the spread between the best consolidated bid and offer is greater than ⅛th, and

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 8, 1993 ("Amendment No. 1"). Amendment No. 1 corrected certain typographical errors in the proposal.

[2] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR-BSE-84-04). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR-BSE-87-06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR-BSE-90-01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR-BSE-91-01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR-BSE-92-01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR-BSE-92-04), at which point the initial pilot program ceased to exist as a separate program. Commission approval of the BSE's current SPEP pilot program expires on December 31, 1993.

[3] BEACON is the BSE's automated order-routing and execution system. BEACON provides a guarantee of execution for market and marketable limit orders up to and including 1,299 shares. In addition, BEACON can be used to transmit orders not subject to automatic execution. See BSE Rules, Chp. XXXIII. Sec. 5(a) and 7.

[4] Telephone conversation between Karen Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 23, 1993.

[5] Unlike Turnaround Time, see *supra* text accompanying note 4, Holding Orders Without Action is not limited to those orders guaranteed automatic execution through BEACON.

[6] According to the BSE, the Holding Orders Without Action calculation will not be in effect until the individual stock has opened the primary market. In addition, certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the Holding Orders Without Action calculation. Telephone conversation between Karen Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 23, 1993.

such specialist executes five of the orders between the bid and offer, his/her raw score would be 50% and would receive 9 points since it falls in the 46 to 50 percent range. This calculation will comprise 25% of the overall evaluation program.

TRADING BETWEEN THE QUOTE

Percentage of orders	Points
51 and up	10
46–50	9
41–45	8
36–40	7
31–35	6
26–30	5
21–25	4
16–20	3
11–15	2
0–10	1

The fourth measure is Executions in Size Greater than BBO, which measures the number of market and marketable limit orders which exceed the BBO size and are executed in size larger than the BBO size. Thus if a specialist receives a total of 10 market and marketable limit orders which exceed the BBO size and executes nine of the orders in size larger than the BBO size, his/her raw score would be 90% and would receive 8 points since it falls in the 86 to 90 percent range. This calculation will comprise 25% of the overall evaluation program.

EXECUTIONS IN SIZE GREATER THAN BBO

Percentage of orders	Points
96–100	10
91–95	9
86–90	8
81–85	7
76–80	6
71–75	5
66–70	4
61–65	3
55–60	2
55 and below	1

In addition, several changes have been made to the questionnaire (SPEQ) in view of the adoption of the objective measures which have made some questions obsolete. The minimum acceptable raw score for each question remains at 4.5. Thus if a specialist receives a raw score of 4.5 for each question for a weighted raw score (based on the weights for each question within the questionnaire) of 50.0052, he/she would receive 4 points since it falls in the 50 to 54 weighted raw score range. The questionnaire will comprise 20% of the overall evaluation program.

QUESTIONNAIRE

Weighted raw score	Points
83 and above	10
77–82	9
72–76	8
66–71	7
61–65	6
55–60	5
50–54	4
44–49	3
38–43	2
37 and below	1

Using the examples for each measure above, the following weighted point totals would result in an overall program score of 7.45:

Measure	Points	Weighted points
Turnaround Time (15%)	7	1.05
Holding Orders Without Action (15%)	9	1.35
Trading Between the Quote (25%)	9	2.25
Executions in Size > BBO (25%)	8	2.00
Questionnaire (20%)	4	0.80
		7.45

The rule has been amended to reflect that any specialist who is deficient [7] in any one of the objective measures for two out of three consecutive review periods will be required to appear before the Performance Improvement Action Committee to discuss ways of improving performance. If performance does not improve in the subsequent period, the specialist will appear before the Market Performance Committee for appropriate action, as described below.[8]

Any specialist who falls below the threshold level for the overall evaluation program for two out of three consecutive review periods will be required to appear before the Market Performance Committee and the Committee will take action to address the deficient performance as provided for in Paragraph 2156.10–.60.[9] A specialist who is ranked in the bottom ten percent of the overall evaluation program but who is above the threshold level for the overall program will be subject to staff review to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems.

The following threshold scores have been set at which a specialist will be deemed to have adequately performed: [10]

Overall Evaluation Score—at or above weighted score of 5.80 Turnaround Time—below 21.0 seconds (8 points) Holding Orders Without Action—below 21.0% (7 points) Trading Between the Quote—at or above 26.0% (5 points) Executions in Size > BBO—at or above 76.0% (6 points) Questionnaire—at or above weighted score of 50 (4 points)

Due to the subjectiveness of the questionnaire, a specialist who is deficient on the questionnnarie alone will be subject to review by Exchange staff to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems. However, a deficient score on the questionnaire may result in performance improvement action where it lowers the overall program score below 5.80.

The Exchange requests an extension of the current pilot program for a twelve-month period to begin on January 1, 1994. This twelve-month period will enable the Exchange to further evaluate the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) in that the SPEP results weight heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of the proposed rule change.

[7] A specialist is deficient in any measure if he/she scores below the minimum adequate performance thresholds set forth below. See infra, text accompanying note 10.

[8] The Commission notes that, in the event a specialist's performance does not improve, SPEP's Supplemental Material authorizes the Market Performance Committee to take the following actions: Suspending the specialist's trading account privilege, suspending his/her alternate specialist account privilege or reallocating his/her specialty stocks.

[9] See *supra*, note 8.

[10] A specialist who receives a score that is below a minimum adequate performance threshold will be deemed to be deficient in that measure. See *supra*, note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-93-16 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-33031; File No. SR-CBOE-93-31]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Installation of Stock Order Entry Terminals at Options Trading Posts

October 7, 1993

On July 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the installation of stock order entry terminals at options trading posts. Notice of the proposal appeared in the **Federal Register** on September 15, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The CBOE proposes to install automated order-entry terminals on the equity options floor whereby options market-makers may enter orders to buy or sell stocks underlying the options in which they make markets. These terminals will provide front-end input for automated order routing and/or execution systems such as the DOT System of the New York Stock Exchange, Inc. ("DOT System") or the MAX system of the Chicago Stock Exchange, Inc. ("MAX System"). The installation of order-entry terminals at options trading posts represents an expansion of the use of stock terminals previously approved by the Commission.[4] The order-entry terminals to be added pursuant to this proposal will be used solely for the purposes of hedging risks associated with options market-making activities. The terminals will not be used to make markets in the underlying stocks themselves. Initially, the Exchange intends to add a limited number of order-entry terminals at selected trading posts but, with experience, may add additional order-entry terminals at other posts on the equity options floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[5] in that the proposal promotes just and equitable principles of trade, and facilitates transactions in securities. Specifically, the Commission finds that the CBOE proposal to install stock order-entry terminals at options trading posts may permit market-makers to more efficiently acquire positions in underlying stocks to hedge the risks of options positions assumed in connection with their market-making activities. This will facilitate market-makers securities transactions since it will no longer be necessary for market-makers stock orders to be communicated to a member firm's booth or other off-floor location for further transmission to a stock order execution facility (*e.g.*, the DOT System or the MAX System).

The Commission also finds that any regulatory concerns regarding manipulation of underlying stocks raised by the use of stock order-entry terminals at the trading posts are sufficiently minimized by the restriction that the order-entry terminals may not be used to make markets in the underlying stocks. Additionally, use of the order-entry terminals will be monitored by the CBOE for compliance with all applicable Exchange and SEC rules and regulations utilizing the same procedures that currently apply to the monitoring of stock orders of market makers entered through other means.[6]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit CBOE to install a limited number of stock order-entry terminals at options trading posts without delay. The Commission believes that the CBOE proposal does not raise any new issues since a comparable proposal by another options exchange has previously been approved by the Commission.[7] The Commission further notes that it has not been made aware of any adverse

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] See Securities Exchange Act Release No. 32856 (September 9, 1993), 58 FR 48398.

[4] See Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (order approving use of Instinet terminals at CBOE options trading floor posts for quotation information only and terminals with order-entry capability in member firm booths) ("Exchange Act Release No. 21585"); Securities Exchange Act Release No 22110 (June 3, 1985), 50 FR 24344 (order approving use of Instinet terminals at specialists' posts and in member firms' booths on the American Stock Exchange, Inc. ("AMEX") options trading floor for purposes of facilitating the execution of securities transactions) ("Exchange Act Release No. 22110").

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See Letter from Jeffrey Schroer, Vice President, Market Surveillance, CBOE, to Bradley Ritter, Attorney, Office of Options, Division of Market Regulation, Commission, dated October 6, 1993.

[7] See Exchange Act Release No. 22110, *supra* note 4.

comments concerning the operation of stock order-entry terminals located in CBOE member firm booths or on the AMEX options floor since their installation. Accordingly, the Commission believes that good cause exists to approve the proposed rule change on an accelerated basis.

For the reasons discussed above, the Commission finds that the proposal relating to the installation of stock order-entry terminals at trading posts on the equity options trade floor is consistent with the Act, and in particular, section 6 of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–93–31) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25329 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33024; File No. SR–CBOE–93–39]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Message Service User Fees

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to establish monthly subscriber fees to be paid by members who are approved to use the Exchange's PhoneMail message services. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish monthly subscriber fees to be paid by members who are approved to use the Exchange's PhoneMail message service. The PhoneMail system is designed to allow subscribers to receive calls at a personal mailbox and to enable them to record, send, and listen to voice messages from any touch-tone telephone at any time. It is also designed to enable subscribers to store messages in their personal mailboxes. The Exchange states that the fees being imposed hereunder are intended to cover the Exchange's costs in installing, implementing, and maintaining the PhoneMail message service.

This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–39 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25331 Filed 10–14–93; 8:45 am]

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34-33030; File No. SR-NASD-93-40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Part IX of Schedule D to the NASD By-Laws Regarding Rules and Procedures of the NASD Local Quotations Program

October 7, 1993.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[1] on July 28, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change would delete Part IX of Section D to the NASD By-Laws regarding rules and procedures of the NASD's Local Quotations Program.

Notice of the filing of this proposal appeared in the **Federal Register** on August 25, 1993.[2] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background

Part IX of Schedule D to the NASD By-Laws ("Schedule D") provides for the NASD Local Quotations Program ("Program"), which was a service of the NASD designed to provide a source of quotations to the media for securities of particular interest to specific communities. The Program was administered by an NASD Information Committee which, in addition to other specified functions, appointed members to NASD Local Quotations Committees. The function of the NASD Local Quotations Committees was to select and provide to local media a list of Nasdaq securities and non-Nasdaq securities based on the National Inclusion Standards and Local Inclusion Standards contained in Sections C and D of Part IX to Schedule D.

In recent years, the program has been phased-out by the NASD and the specified NASD Committees created under the program have ceased to function. Under current practice, the NASD provides certain news media organizations and other market data vendors with two electronic data lines containing information on all Nasdaq National Market System ("Nasdaq NMS") securities and Nasdaq SmallCap Market ("Nasdaq SmallCap") securities contained in the Nasdaq System.[3] One data line provides bid/ask quotes for all Nasdaq Stock Market securities, and the other data line provides last sale information for all Nasdaq Stock Market securities. Most news media organizations currently receive quotation information on all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq NMS securities currently are made by individual news media organizations based on their respective publication criteria.

III. Discussion

The Commission has determined that the NASD's proposal is consistent with the provisions of section 15A(b)(6) of the Act[4] which requires that the rules of a national securities association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change deletes rule language regarding an out-dated NASD practice of providing the news media of specific communities with securities quotations of local interest.[5] Deletion of Part IX of Schedule D reflects the NASD's determination to end the practice of only disseminating certain securities to the local news media pursuant to the Local Quotations Program in favor of the current practice whereby two electronic data lines disseminate information on all Nasdaq System securities to certain media organizations and market data vendors. Most news media organizations currently receive quotation information regarding all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD's electronic data lines provide greater market information to the public than the procedures provided for under the Local Quotations Program contained in Part IX of Schedule D. The dissemination of quotes over the NASD electronic data lines, therefore, help perfect a free and open market and national market system, and help to protect investors and the public interest.

IV. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with section 15A(b)(6) of the Act and that it is appropriate to approve the deletion of Part IX of Schedule D to the NASD By-Laws.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25283 Filed 10-14-93; 8:45 am]

BILLING CODE 8010-01-M

[1] File No. SR-NASD-93-40.

[2] See Securities Exchange Act Release No. 32764 (August 18, 1993), 58 FR 44868.

[3] The Nasdaq System is comprised of both Nasdaq SmallCap and Nasdaq/NMS securities.

[4] 15 U.S.C. 78o-3.

[5] The Commission recently approved a proposed rule change to delete Part V of Schedule D to the NASD By-Laws regarding publication and dissemination of quotations to the news media. See, Securities Exchange Act Release No. 32246 (April 30, 1993), 58 FR 27598 (File No. SR-NASD-93-14). The NASD notes that the rationale for deleting Part V is very similar to the Association's rationale for the proposed deletion of Part IX of Schedule D.

[6] 17 CFR 200.30-3(a)(12).

[Release No. 34-33000; File No. SR-NASD-93-52]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Pricing of Open Orders

October 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to add a new Section to the Rules of Fair Practice to require members holding open orders to adjust the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. Below is the text of the

proposed rule change. New language is italicized.

Adjustment of Open Orders

Sec. .

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower ⅛ of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher ⅛ of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(iii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above: provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good 'til cancelled," "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this rule shall not apply to orders: 1) governed by the rules of a registered national securities exchange; 2) marked "do not reduce"; 3) marked "do not increase"; (4) open stop orders to buy; or (5) open sell orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD does not currently require its members to adjust open orders of securities quoted ex-dividend, ex-rights, ex-distribution or ex-interest. An open order is an order to buy or sell which remains in effect until it is executed or cancelled, or expires. Such orders are also known as "good 'til cancelled," "limit," or "stop limit." The NASD believes it is important to adopt a standard for business practices and ethics in dealing with customer open orders. The NASD is proposing to amend the Rules of Fair Practice to require members holding such orders to adjust the price and, if necessary, the size of the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest.

Because there is currently no NASD rule governing open orders, members adjust them according to their own procedures unless the rules of another self-regulatory organization apply to the transaction (e.g., New York Stock Exchange Rule 118). These procedures can vary from automatic adjustment, automatic withdrawal, reconfirmation of the order with the customer, or no action. Further, the procedures may vary among orders entered at the same firm because the orders are routed to different firms for execution. As a result, investors may find that their open orders are executed without adjustment after the ex-date at a higher cost per share than they intended based on their valuation of the security. For example, an investor entering a limit order for a security at $10 per share prior to the dividend date may have based his pricing judgment on the impending dividend declaration. If his order remains open after the ex-dividend date, he may find his order in the money and executed at the dividend-assuming price even though he would not be entitled to the dividend.

Moreover, the fact that some members might adjust open orders on ex-dates while others do not, creates confusion for customers and is inconsistent with the high quality and confidence the NASD has sought to promote in the Nasdaq Stock Market and the non-Nasdaq over-the-counter market. The NASD believes that the rule proposed herein sets forth a unitary and predictable method of handling the adjustment of open orders, eliminates the potential unfairness associated with the failure to adjust such orders, and provides consistency in the adjustment of open orders for NASD members that are also members of the New York Stock Exchange and American Stock Exchange.

Proposed Subsection (a) of the new Rule of Fair Practice would require a member holding an open order from a customer or broker/dealer, prior to executing or permitting the order to be executed, to adjust the price of the order by the amount of any dividend, payment or other distribution on the ex-date. Subsections (a)(i) through (a)(iii) specify the adjustment procedures for certain situations.

Subsection (a)(i) provides that in the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower ⅛ of a dollar. For example, if an issuer declares a $.30 per share dividend, on the ex-dividend date the price of an investor's open order to purchase 100 shares of that security at $10 per share would be reduced by $.30, which, when rounded down to the nearest variation in trading units, results in a price of $9⅝ per share. Thus, the investor's initial valuation at $10.00 per share before the ex-dividend date is proportionately maintained by revising the order to $9⅝ per share after the ex-date, reflecting the diminished post-dividend value of the security.

Subsection (a)(ii) provides that for stock dividends or splits the price of the order shall be reduced by rounding the dollar value of the dividend distribution or split to the next higher ⅛ of a dollar and subtracting that amount from the price of the order. Determining the dollar value per share of the distribution is accomplished by multiplying the adjusted value per share after the dividend by the percentage increase in shares. For example, for an open order @ $10 per share and a 3 for 2 distribution, the dollar value per share of the dividend is first determined by:

($10 × 2)/3 × (% increase in shares) = $20/3 × ½ = $6.67 × .50 = $3.33. When rounded to the next higher ⅛ of a share, $3.33 is $3⅜ per share. Then, subtracting $3⅜ from 10 per share, the resulting price is $6⅝ per share. Using another example, for an open order @ $10 per share and a 5 for 3 distribution, the dollar value per share of the distribution is first determined by: ($10 × 3)/5 × (% increase in shares) = $30/5 × ⅔ = $6 × .667 = $4 which, not requiring rounding, is $4 per share. Then, subtracting $4 from $10 per share, the resulting price is $6 per share.[1]

Subsection (a)(ii) also provides for increasing the size of the order to maintain its proportionality with the dollar amount of the original order taking into account the price reduction. This is accomplished by multiplying the number of shares of the original order by the number of shares to be distributed for each share. The result is then divided by the number of shares to be exchanged for new shares in the distribution and rounded to the next lower round lot. For example, for a 100 share open order and a 3 for 2 distribution the resulting number of shares is: (100 × 3)/2 = 150 shares, which when rounded down to the next lower round lot = 100 shares, the size of the original order. For a 1000 share open order and a 3 for 2 distribution the resulting number of shares is: (1000 × 3)/2 = 1500 shares, which is equal to a round lot and therefore does not require rounding. Finally, for a 1000 share open order and a 5 for 3 distribution the resulting number of shares is: (1000 × 5)3 = 1666 shares, which when rounded down to the next lower round lot = 1600 shares.

Subsection (a)(iii) provides that when a dividend is payable at the option of the stockholder in either cash or securities, the order shall be reduced by the dollar value of the cash or securities, whichever, is grater, according to the formulas in Subsections (a)(i) and (a)(ii) of the proposed rule. However, if the stockholder opts for securities, the size of the order shall be increased according to the formula in subsection (a)(ii).

Proposed Subsection (b) requires the member to reconfirm an open order prior to execution if the value of the distribution cannot be determined. Proposed Subsection (c) requires open orders to be cancelled where the security is the subject of a reverse split. Proposed Subsection (d) defines the term "open order" as an order to buy which remains in effect for a definite or indefinite period of time until it is either executed, cancelled, or expires, including, but not limited to, orders marked " good 'til cancelled," "limit" or "stop limit."

Finally, proposed Subsection (e) exempts: (1) Open orders subject to the rules of a registered national securities exchange, (2) open stop orders to buy, and (3) open sell orders, as well as orders marked "do not reduce" or "do not increase." Open stop orders to buy and open sell orders are exempted because the assumptions underlying such an order may not include the value of an upcoming dividend and the combination of stop and limit prices in such an order makes the effect of repricing unpredictable. Order marked "do not reduce" or "do not increase" are the method for the customer to state that he is aware of the implications of not adjusting the order on the ex-date.

The NASD believes that the proposed rule change is consistent with the provisions of section 14A(b)(6) of the Act,[2] which require that the rules of the association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of fair trade, and protect investors and the public interest, in that the rule creates a single method of handling the adjustment of open orders after the ex-date. In addition to eliminating the potential unfairness associated with the failure to adjust such orders, the incorporation of a uniform standard contributes to the order and predictability which form the basis for investor confidence and participation in the Nasdaq Stock Markets and non-Nasdaq over-the-counter marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25328 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Notice to Members 93–61 (September 1993), publishing the proposed rule change for vote, included a suggested alternative for calculating the price adjustment.

[2] 15 U.S.C. 78o–3(b)(6).

[Release No. 34–33016; File No. SR-Phlx-93–23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending By-Law, Article X, Authorizing the Establishment of an Audit Committee

October 5, 1993.

On June 1, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1) (1988).

thereunder,[2] a proposed rule change to amend its By-Laws to authorize the establishment of an Audit Committee as a Standing Committee of the Board of Governors ("Board").

The proposed rule change was published for comment in Securities Exchange Act Release No. 32688 (July 28, 1993), 58 FR 41532 (August 4, 1993). No comments were received on the proposal.

Presently, only the Exchange's clearing agency subsidiaries possess audit committees pursuant to their By-Laws.[3] The Exchange's Board determined that corresponding benefits to the Phlx could be derived from establishing an Audit Committee. The Exchange, therefore, proposes to amend Article X, Section 10 of its By-Laws to establish an Audit Committee as a Standing Committee of the Phlx Board.[4] The proposed Audit Committee would review reports from the management, internal audit staff, and independent auditors, regarding the internal financial controls of the Exchange and the adequacy of the internal audit program. The Audit Committee also would be able to take appropriate action in response to these reports.[5]

The Exchange's Audit Committee would be separate from the Exchange's subsidiaries' audit committees, but would consult with the latter prior to making a recommendation to the Board respecting selection of the Exchange and its subsidiaries' independent auditors. In this regard, the By-Law provision relating to the Phlx Finance Committee, By-Law X, Section 10–14 would be amended to remove this function from the Finance Committee. The Exchange states that the internal audit staff that presently reports exclusively to the subsidiaries' audit committees would have the additional responsibility to report to the proposed Exchange Audit Committee.[6]

The Phlx Audit Committee would be comprised of at least five members, at least three of whom must be Board members, with the remainder being persons considered to be qualified. Phlx By-Law, Section 10–9(a) would specify that Audit Committee members must not serve in a management capacity with the Exchange or its affiliates and must be free of any other relationships that, by Board decision, would interfere with the exercise of independent judgment. Audit Committee members would be appointed by the Board.[7]

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1) and 6(b)(5).[8] Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission believes that the proposed establishment of the Audit Committee as a Standing Committee of the Board is consistent with section 6(b)(1) because the proposal should facilitate Exchange compliance with Rule 6a–2 of the Act.[9]

Exchange Act Rule 6a–2 requires that a registered national securities exchange file with the Commission annual amendments to its registration statement. More specifically, Rule 6a–2(a)(2) requires that an exchange submit to the Commission an audited consolidated financial statement, for the latest fiscal year of the exchange, which is prepared in accordance with generally accepted accounting principles and is covered by a report prepared by an independent public accountant. Rule 6a–2(a)(2) also requires that a registered national securities exchange submit to the Commission an unconsolidated financial statement, for the latest fiscal year, for the exchange, its affiliates, and its subsidiaries.

The Commission believes that the establishment and composition of the Audit Committee should further the objectives of section 6(b)(1) by enhancing the Exchange's capacity to comply with the financial reporting requirements set forth in Rule 6a–2 under the Act. As described above, the Audit Committee's responsibilities include recommending to the Board the selection of an independent auditor and overseeing the audit. The Commission believes that the composition of the Audit Committee should help to ensure that Committee members act impartially in their oversight of the audit process. The Commission believes that this independent oversight should, in turn, facilitate compliance with Rule 6a–2, by ensuring that the financial statements submitted to the Commission by the Exchange are audited by a truly independent accountant. Moreover, the Commission believes that because the proposal would allow other qualified persons, *i.e.*, non-members of the Board, to serve on the Committee, the proposal should contribute to the diversity of experience and expertise as well as the independence of the Committee.

The Commission believes that the proposed amendment is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. The Commission believes that the proposed rule change should promote the requirements of section 6(b)(5) by providing for an Audit Committee which is composed of impartial Committee members. As noted above, the proposed amendment will require that all Committee members be selected from among members of the Board or other qualified persons who must be free of any relationship with Exchange management or any other relationship that would interfere with the exercise of independent judgment. The Commission believes that the proposed composition of the Audit Committee should provide the necessary independence for the proper oversight of the Exchange's financial procedures. The importance of an independent Audit Committee cannot be understated if that Committee, and the Board of Governors as a whole, are to do their job effectively.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Phlx–93–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[2] 17 CFR 240.19b–4 (1991).

[3] See Article IV, Section 8(a), (i) of the Stock Clearing Corporation of Philadelphia By-Laws; and Article IV, Section 8(a), (i) of the Philadelphia Deposition Trust Company By-Laws.

[4] The standing committees are appointed by the Chairman of the Board, subject to Board approval. See Article X, Section 10–1(b) of the Phlx By-Laws.

[5] Conversation between Murray L. Ross, Secretary, Phlx, and Elizabeth Cosgrove, Attorney, Commission, on July 8, 1993. See proposed Article X, Section 10–9(b).

[6] The management of the Exchange has decided to retain the internal audit staff to oversee Exchange departments and operations.

[7] Appointments to the Audit Committee would be made as promptly as possible after each annual meeting and election, and each appointee would serve for one year or until a successor is appointed. See Article X, Section 10–1(b) of the Phlx By-Laws.

[8] 15 U.S.C. 78f(b) (1) and (5) (1988).

[9] 17 CFR 240.6a–2 (1991).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-25280 Filed 10-14-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33025; File No. SR-Phlx-93-30]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 1047A Regarding Index Option Opening Rotations, Halts and Reopenings

October 6, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 29, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Phlx Rule 1047A to: (1) Require specialists to open an industry index option for trading once securities representing 90% of the current value of the index have opened for trading on the primary market; (2) to permit specialists to open such index options once securities representing 50% of the current value of the index have opened; (3) to require specialists to halt trading any index option once securities representing more than 50% of the current value are halted or suspended; (4) to permit specialists to halt trading once securities representing more than 10% of the current value of the index are halted or suspended; and (5) to permit specialists to reopen halted options once securities representing 50% of the market value of an index are opened. Although the text of Rule 1047A would be reorganized, the following provisions would not be substantively changed: (1) The provison in Rule 1047A(a) that the Exchange may halt index options trading in the best interests of fair and orderly markets if certain conditions are met, which would appear in Rule 1047A(c); (2) Rule 1047A(d) would be renumbered as paragraph (e); (3) Rule 1047A(c), to be renumbered as paragraph (b) would be retitled as "Modified Rotations and. SORT"; and (4) the third paragraph of Rule 1047A(a) would contain the provisions formerly in paragraph (b) regarding the procedure for opening.

In addition, with respect to reorganization, Rule 1047A, currently titled "Trading Rotations, Halts or Suspensions" would be retitled "Trading Rotations, Halts or Reopenings." In addition, the Phlx is proposing to reorganize the paragraphs to logically follow the procedure of the opening, halting and reopening of trading. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend Rule 1047A governing the opening, halting and reopening of index options in order to definitively establish the specialist's obligation with respect to opening such options as well as to bring this rule in line with other Exchange rules. For example, the Phlx is proposing to adopt paragraph (d) to govern the reopening of halted index options because there is currently no such provision. Pursuant to this provision, a specialist would be allowed, with floor official approval, to reopen an index option once securities representing 50% of the value of the index are open for trading on the primary market.

With respect to the specialist's ability to open an option, Rule 1047A currently provides that the specialist must open an industry index option once securities representing 50% of the value of the index are open for trading. Under the proposed rule change, the specialist would not be required to open the index until securities representing 90% of the market value of the index are open on the primary market. The Phlx believes that because a specialist will often feel comfortable to open an issue with as low as 50% of the market value open, in these cases, the specialist should be allowed to open the index. The Phlx puts forth the proposal in response to recent situations where there were delays in opening certain stocks underlying Phlx-traded index options. The Exchange asserts that the proposed rule change recognizes pricing difficulties when less than all of the underlying component stocks are open for trading in the primary market. Thus, the intent is to expand the specialist's ability to refrain from opening an index option for trading in order to promote just and equitable principles of trade and to maintain fair and orderly markets. The Phlx believes, accordingly, that when securities representing between 50% and 90% of the index value are open for trading, the specialist's ability to delay an opening until the index price more accurately reflects its true value should facilitate a more fair and orderly execution of orders in the respective option series.

With respect to halts, Rule 1047A currently provides that the Exchange may halt trading whenever trading in securities representing 10% of the current index value of all stocks underlying the industry index is halted or suspended and whenever trading in securities representing 20% of the current index value of a market index is halted or suspended. Under the current proposal, a halt would be permitted whenever trading in securities representing 10% of the current index value of all stocks underlying all indexes is halted or suspended. However, a halt would be required when securities representing 50% of the current index value are halted or suspended.

The Exchange believes that the foregoing rule change proposal is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by preventing the occurrence of options trading based on incomplete pricing and by providing a liquid market for index options when pricing is available. In this regard, the Phlx believes that to limit a required opening of industry index options to situations where securities representing 90% of the index value are open should ensure that options are opened once this

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[1] On July 13, 1993 the Phlx amended the rule change proposal to adopt a floor procedure advice to parallel the provisions of the proposed rule in order to make the procedures readily available to floor members in their advice handbooks. See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC dated July 8, 1993 ("Amendment No. 1").

level of pricing is available. In situations where a specialist with floor official approval determines that the ability to price the option does exist, then the option could be opened for trading as long as securities representing more than 50% of the index value are open for trading. In these situations, permitting the option to trade promotes liquidity and confidence in the marketplace.

The Phlx also believes that permitting the specialist to request floor official approval to halt index options trading where securities representing 10% or more of the index value are halted or suspended should promote just and equitable principles of trade by ceasing trading where all investors lack access to pricing information. Although a halt is currently required when securities representing 10% of the index value stop trading, this number would be changed to 50%. The Phlx believes that in certain situations, as determined by the specialist with floor official approval, it is appropriate to continue trading when securities representing more than 10% but less than 50% of the index value stop trading. The remaining securities that are trading can be enough to price the index option and, as stated above, the Phlx believes that to continue trading promotes liquidity in that option.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-93-30 and should be submitted by November 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25333 Filed 10-14-93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Benton Oil and Gas Company, Common Stock, $.01 Par Value; 8% Convertible Subordinated Debentures Due 2002) File No. 1-10762

October 7, 1993.

Benton Oil and Gas Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on February 3, 1993, to withdraw the Company's Common Stock and Debentures from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotation/National Market System ("NASDAQ/NMS") and such Debentures on the NASDAQ Small Cap Market ("NASDAQ/Small Cap"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS and the listing of the Company's Debentures on NASDAQ/Small Cap will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock;

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 29, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-25285 Filed 10-14-93; 8:45 am]

BILLING CODE 8010-01-M

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[2] 17 CFR 200.30-3(a)(12) (1993).

[Release No. IC-19775; 812-8520]

Lutheran Brotherhood, et al.; Application for Exemptions

October 8, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lutheran Brotherhood ("LB"), LB Variable Annuity Account I (the "Variable Account"), and Lutheran Brotherhood Securities Corp. ("LBSC").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Variable Account, which funds certain variable annuity contracts.

FILING DATES: The application was filed on August 4, 1993 and amended on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Attorney, at (202) 504-2802, or Michael V. Wible, Special Counsel, at (202) 272-2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. LB, which was organized in 1917, is a fraternal benefit society owned and operated for its members under the laws of the State of Minnesota. LB is currently licensed to transact life insurance business in 50 states and the District of Columbia. LB had total assets at December 31, 1992 of over $7.8 billion.

2. The Variable Account is a separate account of LB, and was established by LB's Board of Directors pursuant to the laws of Minnesota to fund individual flexible premium deferred variable annuity contracts (the "Contracts"). The Variable Account is registered as a unit investment trust under the 1940 Act, and meets the definition of "separate account" set out in section 2(a)(37) and Rule 0-1(e) under the 1940 Act. The income, gains, and losses of the Variable Account, whether or not realized, will be credited to or charged against the amounts allocated to it in accordance with the Contracts, without regard to any other income, gains, or losses of any other separate account or arising out of any other business that LB may conduct.

3. Premiums paid under any Contract may be allocated, according to the Contract owner's instructions, to LB's Fixed Account or to one or more of the subaccounts of the Variable Account (the "Subaccounts"). The Variable Account initially will have four Subaccounts: The Growth Subaccount, the High Yield Subaccount, the Income Subaccount, and the Money Market Subaccount. Each of these Subaccounts will invest solely in a corresponding portfolio of LBVIP Series Fund, Inc. (the "Fund"), which is registered under the 1940 Act as an open-end diversified management investment company of the series type. LB reserves the right to establish additional Subaccounts, each of which would invest in shares of a new corresponding portfolio of the Fund or in shares of another investment company having a specified investment objective.

4. LBSC, which is an indirect subsidiary of LB, will be the principal underwriter of the Contracts. LBSC is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc.

5. The Contracts will be offered only to persons who are eligible for membership in LB, unless otherwise required by state law. The Contracts may be sold to retirement plans that may or may not qualify for special Federal tax treatment under the Internal Revenue Code. The minimum about that LB will accept as an initial premium is $600 on an annualized basis. Subsequent premiums may be paid under a Contract, but LB may choose not to accept any subsequent premium if it is less than $50. On or before the date of which annuity payments are scheduled to begin (the "Maturity Date"), the Contract owner may request the transfer of all or part of the accumulated value of the Contract among the Subaccounts or LB's Fixed Account, which transfer will be effected LB without charge. LB reserves the right to limit the number of transfers in any Contract year, provided that at least two such transfers each Contract year always will be allowed. The Contract offers a death benefit that applies both before and after the Maturity Date.

6. No charge for sales expense is deducted at the time premiums are paid. However, during the first six Contract years, a charge is deducted from the accumulated value of the Contract in the case of a full or partial surrender before annuity payments begin and, if certain settlement options are selected, at the time annuity payments begin. Up to 10% of the accumulated value of a Contract may be surrendered each Contract Year without a surrender charge (the "free corridor"). A 6% surrender charge is assessed against the amount in excess of the free corridor during the first Contract year, and the applicable percentage declines by one percent for surrenders in each Contract year thereafter. In no event will the total surrender charge on any one Contract exceed 6½% of the total gross premiums paid under the Contract.

7. On each Contract anniversary prior to and including the Maturity Date, LB will deduct proportionately from the Subaccounts and the Fixed Account that make up a Contract's accumulated value an administrative charge of $30 to reimburse LB for administrative expenses relating to the Contract, the Variable Account and the Subaccounts. This charge will be lower to the extent legally required in some states. No such charge is deducted if on that Contract anniversary the total amount of premiums paid under the Contract, less the amount of all prior partial surrenders (which includes the amount of related surrender charges), is equal to or greater than $5,000. LB will not increase this charge, regardless of its actual expenses, and LB does not expect to make a profit on this charge. No administrative charge is payable during the annuity period.

8. The variable annuity payments made to annuitants will vary in accordance with the investment experience of the Subaccounts selected by the Contract owner. However, neither such variable annuity payments nor fixed annuity payments (if fixed annuity payments have been selected) will be affected by the mortality experience of persons receiving the annuity payments.

This mortality risk is imposed on LB because of the guaranteed annuity rates incorporated into the Contract, which cannot be changed. LB also assumes the mortality risk that a death benefit in excess of the current accumulated value of the Contract will be paid. LB incurs an expense risk on account of its guarantee to not increase the administrative expense charge regardless of its actual expenses.

9. To compensate LB for assuming such mortality and expense risks, LB proposes to deduct a daily mortality and expense risk charge from the average net assets in the Variable Account. LB has determined that a mortality and expense risk charge at an annual rate of 1.25% of the average daily net assets of each Subaccount would be reasonable in relation to the mortality and expense risks assumed by LB under the Contracts. LB will, however, initially impose a daily mortality and expense risk charge equal to an annual rate of 1.10% (approximately 0.80% for mortality risk and 0.30% for expense risk). The mortality and expense risk charge is guaranteed not to increase above an annual rate of 1.25%.

10. If the amount of all charges assessed in connection with the Contracts as described above is not enough to cover all expenses incurred in connection therewith, the loss will be borne by LB. Any such expenses borne by LB will be paid out of its general account, which may include proceeds derived from mortality and expense risk charges deducted from the Variable Account. If the amount of the mortality and expense risk charge proves more than sufficient to cover the actual cost of the mortality and expense risks undertaken, the excess will be retained by LB.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction under the Contracts of the proposed mortality and expense risk charge. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales load) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Because the proposed mortality and expense risk charge is not such a bookkeeping or administrative expense charge, Applicants seek exemptions from section 27(c)(2) and 26(a)(2)(C).

2. Applicants represent that the proposed mortality and expense risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks, and that the maximum possible level of such charge (an annual rate of 1.25%) is reasonable in relation to the mortality and expense risks assumed under the Contracts. Applicants also represent that the maximum level of such charge is within the range of industry practice for comparable annuity contracts. These representations are based upon an analysis of the mortality and expense risks involved, and an analysis of publicly available information about comparable contracts, taking into account the particular annuity features of such contracts (including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which charges are imposed, and the markets in which such contracts are offered). Applicants will maintain and make available to the Commission upon request a memorandum explaining the basis for these representations and the documents used to support these representations.

3. Applicants do not believe that the surrender charge being imposed under the Contracts will cover the expected costs of distributing the Contracts. Any loss will be paid by LB out of its general account, which may include proceeds from mortality and expense risk charges. However, LB has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Variable Account and the Contract owners. LB will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

4. Applicants further represent that the Variable Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

Applicants' Conclusion

In light of the foregoing representations, Applicants conclude that the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25330 Filed 10-14-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19769; 812-8324]

Mutual Fund Group, et al.; Application for Exemption

October 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual Fund Group (the "Trust"), The Chase Manhattan Bank, N.A. ("Chase"), and Vista Broker-Dealer Services, Inc. ("VBDS"); on behalf of themselves and any other existing or future open-end investment company registered under the Act for which Chase in the future becomes investment adviser and VBDS in the future becomes principal underwriter.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits them to issue two classes of shares representing interests in the same investment portfolio. As amended, the order would permit applicants to issue multiple classes of shares representing interests in the same investment portfolio, assess a contingent deferred sales charge ("CDSC") on certain redemptions of the shares, and waive or reduce the CDSC in certain instances.

FILING DATE: The application was filed on March 25, 1993, and amended on June 23, 1993, and August 20, 1993. Applicants have agreed to file an additional amendment during the notice period. This notice reflects the changes

to be made by the additional amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Chase Manhattan Bank, N.A., 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and currently consists of 19 series (the "Series"), each of which has separate investment objectives and policies. Certain of the Series (the "Vista Money Market Funds") are covered by a prior order (the "Prior Order"),[1] which permits them to issue two classes of shares representing interests in the same investment portfolio.[2] Other Series (the "Vista Front-End Load Funds") are offered to investors at net asset value per share plus a front-end sales load, and charge distribution and shareholder servicing fees based on the average daily net assets of each Series. The remaining Series (the "Vista No-Load Funds") currently are offered and sold only to certain benefit plans at the net asset value per share of each Series, without the imposition of sales loads, rule 12b-1 plan distribution fees, or shareholder servicing fees.[3]

2. Chase, a wholly-owned subsidiary of The Chase Manhattan Corporation, a registered bank holding company, serves as the investment adviser for the Series pursuant to separate investment advisory agreements with the Trust on behalf of each Series.

3. Pursuant to a distribution and sub-administration agreement with the Trust, VBDS acts as the principal underwriter and distributor of shares of each Series, and bears the expenses of printing, distributing and filing prospectuses and statements of additional information and reports used for sales purposes, and of preparing and printing sales literature and advertisements not paid for by the Series' rule 12b–1 plans. VBDS, for rendering sub-administration services, receives from each Series a fee computed and paid monthly based on an annual rate equal to 0.05% of each Series' average daily net assets, on an annualized basis for its then-current fiscal year.

4. The Trust also has entered into shareholder servicing agreements with Chase and The Chase Manhattan Bank of Connecticut, N.A. (collectively, the "Shareholder Servicing Agents"). These agreements provide that each Shareholder Servicing Agent shall perform the following services as agent for its customers: answers customer inquiries regarding account status and history, the manner in which purchases and redemptions of shares may be effected for each Series for which the Shareholder Servicing Agent is acting, and certain other matters pertaining to a Series; assist shareholders in designating and changing divided options, account designations and addresses; provide necessary personnel and facilities to establish and maintain shareholder accounts and records; and provide such other related services as the Trust or a shareholder may request. Rather than paying the foregoing service fee to the Shareholder Servicing Agents, some classes may pay a service fee to VBDS to pay ongoing commissions, or "trailers," to financial consultants.

5. Applicants propose to implement a multiple class distribution system (the "Variable Distribution Method"). Under the Variable Distribution Method, certain of the Series would provide public investors with the option of purchasing shares either (a) with a conventional front-end sales load and subject to a rule 12b–1 distribution fee and a service fee, as is currently offered by the Vista Front-End Load Funds, or (b) subject to a contingent deferred sales charge and a rule 12b–1 distribution fee and service fee (the "Deferred Option"). Certain of the Series also would offer a third class of shares with a reduced front-end load and a higher rule 12b–1 distribution fee (the "Level Load Option"), and a fourth class of shares that would be a variation of the Front-End Load Option, except that there would be no front-end sales load for purchases in excess of $500,000, although a redemption fee would be imposed for redemptions during the first and second year only (the "Modified Front-End Load Option"). The Vista Money Market Funds would offer a third class of shares ("Class E Shares") to certain institutional and retail clients, and will continue to offer the Vista Shares and Premier Shares classes of shares currently offered to retail and institutional investors. All asset-based fees contemplated by the implementation of the Variable Distribution Method will comply with the asset-based sales charge rules of the National Association of Securities Dealers, Inc. ("NASD").

6. Under the Front-End Load Option, as currently offered by the Vista Front-End Load Funds, an investor would purchase Class A shares at the then current net asset value plus a front-end sales load. The sales loads generally would be subject to reductions for larger purchases and under a right of accumulation. In addition, pursuant to a rule 12b–1 plan, Class A shareholders would be subject to a total distribution fee of up to 0.25% of the average daily net asset value of the Class A shares and an ongoing service fee of up to 0.25% of the average daily net asset value of the Class A shares.

7. Investors choosing the Deferred Option would purchase Class B shares at net asset value without the imposition of a sales load at the time of purchase. Each Series would pay a service fee of up to 0.25% of average daily net assets, and a distribution fee expected to be at an annual rate of up to 0.75% of average daily net assets pursuant to a rule 12b–1 plan. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period (expected to

[1] Mutual Fund Group, et al., Investment Company Act Release Nos. 17539 (June 19, 1990) (notice) and 17590 (July 17, 1990) (order).

[2] Three of the Vista Money Market Funds offer two classes of shares ("Premier Shares," which are made available to institutional investors, and "Vista Shares," which are offered to retail investors) in accordance with the terms and conditions of the Prior Order. The order, if granted, will supersede the Prior Order in its entirety. However, because the order will incorporate all relief previously granted in the Prior Order, the order will not have any effect on shares that have been issued pursuant to the Prior Order.

[3] One Series (the IEEE Balanced Fund), which is offered and sold only to investors who are members of The Institute of Electrical and Electronics Engineers, Inc., is sold at net asset value without the imposition of a sales load, although the fund charges 12b-1 fees and shareholder servicing fees.

be six year) of his or her purchase may be subject to a CDSC that would be paid to VBDS. The CDSC is expected to range from 5% for redemptions made during the first year from initial purchase to 1% for redemptions made during the sixth year since purchase, reducing at a rate of 1% per year (except that in the third and fourth years the rate would be 3% in each year). The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the percentage of the net asset value of the shares at the time of redemption. Series shares that are redeemed will not be subject to a CDSC to the extent that the value of these shares represents (a) capital appreciation of Series assets, (b) reinvestment of dividends or capital gain distributions, or (c) shares redeemed more than six years after purchase. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions that are not subject to any CDSC, and then of other shares held by the shareholder for the longest period of time.

8. Applicants also request the ability to waive or reduce the CDSC on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder, if redemption is made within one year of death or disability of a shareholder, and (b) in connection with any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59. The charge also may be waived on any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code.

9. All Class B shares of each Series will automatically convert to Class A shares after a certain holding period, expected to be, in most cases, approximately eight years, but which may be shorter. Upon the expiration of the holding period, Class B shares (except those purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares of that Series) automatically will convert to Class A shares of the Series at the relative net asset values of each of the classes, and will, as a result, thereafter be subject to the lower distribution fee under the Class A rule 12b–1 plan. For purposes of conversion to Class A, all Class B shares in a shareholder's Series account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Series account (other than those in the sub-account referred to above) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Series' dividends or distributions constituting "preferential dividends" under the Code, and the continuing availability of a private letter ruling or an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if this opinion is no longer available. In the event that conversions of Class B shares do not occur, Class B shares would continue to be subject to the rule 12b–1 distribution fee and any incrementally higher transfer agency costs attending the Deferred Option for an indefinite period.

10. Under the Level Load Option, investors would purchase Class C shares at the current net asset value plus a 1% initial sales charge. In addition, Class C shareholders would be subject to a distribution fee expected to be at an annual rate of up to 0.75% of average daily net assets pursuant to a rule 12b–1 plan, and a service fee of up to 0.25% of average daily net assets.

11. An investor choosing the Modified Front-End Load Option would purchase Class D shares without a front-end sales load at the time of purchase, provided such investor purchases a minimum dollar amount of the Class D shares. The minimum dollar amount, presently proposed at $500,000, will be stated in the prospectus of each Series. Each Series also would pay a distribution fee under its rule 12b–1 plan at an annual rate of 0.25% of average daily net assets and a service fee of up to 0.25% of average daily net assets on Class D shares. In addition, a Class D investor's proceeds from a redemption of Class D shares made within a two-year period of his or her purchase may be subject to a redemption fee at a rate of 1% per year, which would be paid to the Series.

12. Under the Vista Shares Option, shares of the Vista Money Market Funds are made available to retail investors subject to a minimum initial investment of $2,500. The Vista Shares are offered with a rule 12b–1 distribution fee equal to an annual rate of up to 0.25% of the average daily net assets to such class, a service fee equal to an annual rate of up to 0.25% of the average daily net assets of such class, and a fund servicing fee equal to an annual rate of up to 0.10% of the average daily net assets of such class.[4] Fund servicing fees are paid to Chase, as Shareholder Servicing Agent, for the following services: To assist in processing purchase and redemption transactions; to arrange for the wiring of funds; to transmit and receive funds in connection with customer orders to purchase or redeem shares; to verify and guarantee shareholder signatures in connection with redemption orders and transfers and changes in shareholder-designated accounts; to furnish (either separately or on an integrated basis with other reports sent to a shareholder by a Shareholder Servicing Agent) monthly and year-end statements and confirmations of purchases and redemptions; to transmit, on behalf of the Trust, proxy statements, annual reports, updating prospectuses and other communications from the Trust to shareholders of each such Series; to receive, tabulate and transmit to the Trust proxies executed by shareholders with respect to meetings of shareholders of each such Series; and to provide such other related services as the Trust or a shareholder may request.

13. The Premier Shares class currently is made available to institutional investors, subject to a minimum initial investment of $100,000. The institutional investors include, but are not limited to, various internal divisions of Chase and its affiliates as well as the clients of such institutional investors, provided the shares of the Premier Shares class are purchased by the internal division of Chase in an omnibus account for the benefit of such clients and the division performs certain functions including, but not limited to, subaccounting, recordkeeping and responding to all shareholder inquiries concerning purchases, redemptions and exchanges. The Premier Shares are offered with a rule 12b–1 distribution fee at an annual rate of up to 0.10% of the average daily net assets of such class (except the Premier Shares of Vista U.S. Government Money Market Fund, which does not have a rule 12b–1 distribution fee), and a service fee at an annual rate of up to 0.25% of the average daily net assets of such class.

[4] Applicants do not consider the fund servicing fee to be a "service fee" as that term is defined in Article III, Section 26 of the NASD's Rules of Fair Practice.

The Premier Shares also may be subject to a fund servicing fee (as described above) at an annual rate of up to 0.10% of the average daily net assets of such class.

14. Each Vista Money Market Fund also may offer Class E shares, which would be available for purchase by institutional investors that initially invest a minimum of $1 million in the Series. The Class E shares will be offered without a rule 12b–1 distribution fee, a service fee, or a fund servicing fee.

15. From time to time, the Trust may create additional classes of shares, the terms of which may differ from the Class A, Class B, Class C, Class D, Premier Shares, Vista Shares, and Class E shares only in the following respects: (a) Each class of shares would have a different designation; (b) each class of shares might be sold under different sales arrangements (e.g., sales with a front-end sales load, subject to a CDSC, or at net asset value); (c) each class of shares would bear any rule 12b–1 plan or service plan payments related to the class; (d) each class of shares would bear expenses specifically attributable to the particular class ("Class Expenses") limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses relating to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) Trustees' fees incurred as a result of issues relating to one class of shares; and (viii) other expenses that are subsequently identified and determined to be properly allocated to one class of shares which shall be approved by the SEC pursuant to an amended order; (e) the related voting rights as to matters exclusively affecting one class of shares (e.g., the amendment or termination of a rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1, except as provided in condition 16 below; (f) each class of shares may have different exchange privileges; and (g) each class of shares may have different conversion features.

16. Currently, shares of the Series generally may be exchanged at net asset value for shares of other Series, including shares of the Vista Money Market Funds. The exchange privilege applicable to each class of shares will comply with rule 11a–3 under the Act and will be set forth in the prospectus of each Series.

Applicants' Legal Conclusions

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Series might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants believe that the proposed Variable Distribution Method does not raise any of the legislative concerns that section 18 was designed to ameliorate. Under the Variable Distribution Method, mutuality of risk will be preserved with respect to each class of shares in a Series. Further, because each class of shares will be redeemable at all times (subject to the limitations set forth in each Series' prospectus and statement of additional information), no class of shares will have any preference or priority over any other class in the Series, and the similarities and dissimilarities of the classes of shares will be disclosed when required in the prospectuses and statements of additional information of the Series, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of each class of shares will not be rendered speculative.

3. The capital structure of the Series under the proposed arrangement will not induce any group of shareholders to seek investment in higher risk securities to the detriment of any other group of shareholders, since the investment risks of each Series will be borne equally by all of its shareholders. Moreover, the capital structure of the Series could not lead to manipulation of expenses and profits among the various classes of shares, because the Series are not organized in a pyramid fashion. Similarly, the concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities if the Series are not present under the proposed Variable Distribution Method.

4. Applicants believe that the implementation of the proposed Variable Distribution Method will better enable the Series to meet the competitive demands of today's financial services industry. Under the Variable Distribution Method, an investor will be able to choose the method of purchasing shares that is most beneficial, given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Series to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

5. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b-1 plans is equitable and would not discriminate against any group of shareholders. In addition, these arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and, in any event, the interests of the shareholders with respect to service and distribution fees would be adequately protected, since the rule 12b–1 plans for each class will conform to the requirements of rule 12b–1, including the requirement that their implementation and continuance be approved on an annual basis by the Trustees.

6. Applicants believe that implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of shareholders of the Series. Thus, the granting of the order requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Series and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Series will relate solely to: (a) The designation of each class of shares of a Series; (b) expenses assessed to a class as a result of (i) a rule 12b–1 plan providing for a distribution fee, (ii) a service fee, or (iii) a fund servicing fee; (c) different Class Expenses for each class of shares, which are limited to: (i) transfer agency fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as

shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Trustees' fees incurred as a result to issues relating to one class of shares; (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a rule 12b-1 plan) in accordance with the procedures set forth in rule 12b-1, except as provided in condition 16; (e) different exchange privileges; and (f) different conversion features. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of share shall not be so allocated until approved by the SEC.

2. Trustees of the Trust, including a majority of the Independent Trustees, shall have approved the Variable Distribution Method prior to the implementation of the Variable Distribution Method by a particular Series. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Variable Distribution Method will reflect in detail the reasons for determining that the proposed Variable Distribution Method is in the best interests of both the Series and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Series to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Series for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. Chase and VBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Chase and VBDS at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a service agreement, the service agreement will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The Trustees will receive quarterly and annual statements concerning distribution, shareholder and fund servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution or servicing expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Trustees to support any fees charged to shareholders of that class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that Class Expenses and Costs associated with any rule 12b–1 plan and shareholder servicing agreement relating to a particular class will be borne exclusively by such class.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the classes and the proper allocation of income and expenses among the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to applicants, which has been provided to the staff of the Commission, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon that review, will render at least annually a report to the Series that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Series which the Series agree to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among the classes of shares. This representation has been concurred with by the Independent Examiner in the initial reports referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectuses of the Series will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Series shares may receive different compensation with respect to one particular class of shares over another in the Series.

11. VBDS will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The Applicants will require all persons

selling shares of the Series to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Variable Distribution Method will be set forth in guidelines that will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

13. Each Series will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Series will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Series as a whole generally and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applications for publication in any newspaper or similar listing of the Series' net asset values and public offering prices will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payment that the Series may make pursuant to rule 12b–1 plans or shareholder servicing agreements in reliance on the exemptive order.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Series implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 service plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects, except that the New Purchase Class will convert into the New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by Chase and VBDS. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule currently is proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25284 Filed 10–14–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1879]

Assistance to the United Nations Transition Authority in Cambodia; Determination

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S. 2261) (the "Act"), and section 1–201 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use in fiscal year 1993 of $2,000,000 in funds made available under Chapter 4 of Part II of the Act for a voluntary contribution to the United Nations Transition Authority in Cambodia to pay administrative costs, including salaries, of the Provisional Government of Cambodia, and salaries of the combined military forces of the newly constituted Cambodian Army.

This authorization shall be reported to Congress immediately and published in the **Federal Register**.

Dated: September 9, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93–25343 Filed 10–14–93; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1884]

Organization for the International Telegraph & Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint AD–HOC Working Group

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Ad-Hoc Working Group will meet on October 28, 1993 from 10 AM to 1 PM in room 1107, at the Department of State, 2201 C Street, NW. Washington, DC 20520.

The purpose of this meeting is to undertake preparations for the upcoming International Telecommunication Union Plenipotentiary Conference in Kyoto, Japan, September 1994.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of

the meetings. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 30 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Earl S. Barbely,

CCITT National Committee Chairman.

Dated: October 7, 1993.

Warren Richards,

CCIR National Committee Chairman.

[FR Doc. 93-25262 Filed 10-14-93; 8:45 am]

BILLING CODE 4710-45-M

Bureau of Administration

[Public Notice 1880]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Entry to the Department of State main building and its annexes is controlled by a Security Access Control System. Visitors who need access to the buildings on official business may apply for a Department of State Building Pass. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Diplomatic Security.

Title of information collection—Application for Department of State Building Pass.

Form No.—DSP-97.

Frequency—On occasion.

Respondents—Press corps, maintenance personnel visitors, and others.

Estimated number of respondents—8,000.

Average hours per response—15 minutes.

Total estimated burden hours—2,000.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395-3176.

Dated: October 4, 1993.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 93-25342 Filed 10-14-93; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitionsfor exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 4, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 8, 1993.

Joseph Conte,

Acting Assistant Chief Counsel.

Petitions for Exemption

Docket No.: 22286
Petitioner: Finnair Oy
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/Disposition: To extend Exemption No. 3450 to continue to permit Finnair Oy to continue to operate its DC-10-30 aircraft number N345HC when it does not meet all applicable airworthiness requirements, but is capable of safe flight, for the purpose of flying the aircraft to a base for repairs, alterations, or maintenance.

Docket No.: 25238
Petitioner: Chromalloy American Corporation
Sections of the FAR Affected: 14 CFR 145.49
Description of Relief Sought/Disposition: To extend Exemption No. 5394 to continue to permit Chromalloy American Corporation to perform certain maintenance functions on turbine engine blades and vanes at its facility located in Mexicali, Mexico.

Docket No.: 26584
Petitioner: PHH Corporation
Sections of the FAR Affected: 14 CFR 135.165(b)(5)
Description of Relief Sought: To extend Exemption No. 5439 to continue to permit PHH Corporation to operate two BAe-125 airplanes, each equipped with one high frequency (HF) communication system and one equipped with a single long range navigational system (LRNS) in extended over water operations.

Docket No.: 27335
Petitioner: Aloha Skydivers Club
Sections of the FAR Affected: 14 CFR 105.43(a) and (d)
Description of Relief Sought: To allow non-student, foreign parachutists/skydivers to use parachute equipment approved or accepted in their country while making intentional parachute jumps at the facilities of Aloha

Skydivers Club of other FAA-approved sites in the State of Hawaii.

Docket No.: 27423
Petitioner: Mr. Lawrence Edwin Davis
Sections of the FAR Affected: 14 CFR 21.183(d)(2)
Description of Relief Sought/ Disposition: To permit issuance of a Standard Airworthiness Certificate for a Falcon Biplane, model F–1, being restored by the petitioner.

Docket No.: 27434
Petitioner: GE-Aircraft Engines
Sections of the FAR Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/ Disposition: To permit export airworthiness approvals to be issued for model CF6–80C2A5FG01 engines, which are located in Europe.

Docket No.: 27443
Petitioner: Mr. Roy Nerenberg
Sections of the FAR Affected: 14 CFR 129.18(a)
Description of Relief Sought/ Disposition: To permit Translift Airways, Limited, to operate its DC–8–71 aircraft in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until March 31, 1994.

Docket No.: 27445
Petitioner: Sporty's Academy, Inc.
Sections of the FAR Affected: 14 CFR 61.39(a)(2), 61.65(e)(1) and 61.71(a)
Description of Relief Sought: To allow Sporty's Academy Inc. student pilots who graduate from the FAR Part 121, appendix C approved curriculum prior to receiving a commercial pilot certificate, to receive an instrument rating flight test with 40 hours of solo cross country time and 115 hours of total pilot time.

Docket No.: 27457
Petitioner: Daniel Webster College and Ms. Robin L. Bray
Sections of the FAR Affected: 14 CFR 141.35(d)(2)
Description of Relief Sought: To allow Ms. Bray to serve as the Chief Flight Instructor at Daniel Webster College administering a course of training other than those that lead to the issuance of a private pilot certificate or rating or an instrument rating, or a rating with instrument privileges, without the required minimum of 2000 hours as pilot in command (PIC).

Dispositions of Petitions

Docket No.: 25103
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To change the name as reflected on Exemption No. 4803C from Air Wisconsin, Inc. to Air Wisconsin Airline Company. This exemption allows Air Wisconsin, Inc. to use certain foreign original equipment manufacturers (OEM) and those OEM's designated repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certification to perform maintenance, preventive maintenance, and alterations outside the United States on the components and parts used on the petitioner's foreign-manufactured aircraft.
Grant, September 30, 1993, Exemption No. 4803D

Docket No.: 25863
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 91.117 (a) and (b), 91.127(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To continue to permit the Department of Defense to conduct air operations at altitudes, airspeeds, locations, and certain aircraft lighting conditions normally prohibited/ restricted by the affected FAR Sections while in support of drug law enforcement and drug traffic interdiction.
Grant, September 28, 1993, Exemption No. 5100C

Docket No.: 27200
Petitioner: Corporate Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–112 (Mode S) transponder installed on its aircraft operating under the provisions of Part 135.
Grant, October 4, 1993, Exemption No. 5756

Docket No.: 27261
Petitioner: Air Transport International, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought: To extend the compliance date for retro-fitting Air Transport International (ATI's) McDonnell Douglas DC–8 (DC–8) aircraft in order to permit ATI to continue operating pending delivery and installation of certified wind shear warning systems, and would delegate supervision of this revised compliance schedule pending the final compliance deadline to ATI's cognizant Principal Avionics Inspector.
Denial, September 30, 1993, Exemption No. 5754

Docket No.: 27280
Petitioner: Henson Aviation d/b/a/ USAIR Express
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.440(a), 121.441(b)(1), 121.409(b)(2), 121.427(d)(1) and 121, Appendix F.
Description of Relief Sought: To allow the petitioner to conduct Single Visit Training Program (SVTP) for flight crew member and eventually transition into the Advanced Qualification Program (AQP).
Partial Grant, September 30, 1993, Exemption No. 5755

[FR Doc 93–25363 Filed 10–14–93; 8:45 am]
BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. PDA–13(R)]

Application by Chemical Waste Transportation Institute for a Preemption Determination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination whether the Hazardous Materials Transportation Act (HMTA) preempts certain requirements of the New York Department of Environmental Conservation (NYDEC) relating to the transfer and storage of hazardous wastes incidental to transportation.

DATES: Comments received on or before November 24, 1993, and rebuttal comments received on or before January 14, 1994, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–13(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Mr. Stephen C. Hansen, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036,

and (2) Mr. Thomas C. Jorling, Commissioner, New York Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen and Jorling at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. CWTI'S Application for a Preemption Determination

On September 27, 1993, CWTI applied for a determination that the HMTA preempts certain NYDEC requirements in Title 6 of the New York Codes, Rules and Regulations (NYCRR), governing the transfer and storage of hazardous wastes incidental to transportation (hereinafter "NYDEC transfer and storage requirements"). In summary, the NYDEC transfer and storage requirements allow a transporter of hazardous wastes to:

(1) Transfer hazardous wastes only when there is "no consolidation or * * * repackaging in, mixing, or pumping from one container or transport vehicle to another," and any "transfer of hazardous wastes from one vehicle to another is indicated on the Manifest as Second Transporter," 6 NYCRR 372.3(a)(7), and

(2) Store hazardous wastes for five calendar days or less at the transporter's facility if all of the conditions set forth in 6 NYCRR 373–1.1(d)(1)(xv) are met; among these conditions are maintaining a log of all shipments and receipts, daily inspections of containers and vehicles, keeping certain wastes at least 50 feet from the property line and separated from sources of ignition or reaction, providing secondary containment in the area where storage or transfers take place, and prohibitions against opening containers or mixing the contents of containers. 6 NYCRR 372.3(a)(6).

In order to engage in any transfer or storage of hazardous wastes beyond these conditions and limitations, a transporter must obtain the separate permit required for a treatment, storage or disposal facility. *See* 6 NYCRR 373–1.2 and 373–1.1(d)(1)(xv). According to CWTI, penalties for violation of the NYDEC transfer and storage requirements include civil penalties up to $25,000 per day (or $50,000 for subsequent violations) and the revocation or suspension of "any permit or certificate issued to" the transporter. New York Environmental Conservation Law § 71–2705.

The text of CWTI's application is set forth in Appendix A. The attachments to the application, consisting of copies of 6 NYCRR Parts 364, 370, 372 and 373, New York Environmental Conservation Law § 71–2705, and two letters from the U.S. Environmental Protection Agency (EPA), may be examined at RSPA's Dockets Unit. Copies of the EPA letters and relevant excerpts from the New York law and regulations will be provided at no cost, upon request to RSPA's Dockets Unit (see the address and telephone number set forth in "Addresses" above).

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of state and local laws. "[U]niformity was the linchpin in the design of" the HMTA. *Colorado Public Utilities Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA (49 App. U.S.C. § 1811(a)) explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in Section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20

days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

III. Public Comment

All comments should be limited to the issue of whether the NYDEC transfer and storage requirements are preempted by the HMTA. Comments should:

(1) Specifically address (a) the preemption criteria ("substantively the same," "dual compliance," and "obstacle") described in Part I, above, and (b) whether the NYDEC transfer and storage requirements are "otherwise authorized by Federal law";

(2) Set forth in detail the manner in which the NYDEC transfer and storage requirements are applied and enforced; and

(3) Discuss the definitions of "Storage Incidental to Transport" and "Transfer Incidental to Transport" in 6 NYCRR 364.1(c), including whether these definitions impose requirements on transporters of hazardous waste in New York and whether these definitions apply to the NYDEC transfer and storage requirements in 6 NYCRR Parts 372 and 373.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on October 8, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A

September 27, 1993.

Application of the Chemical Waste Transportation Institute to initiate a proceeding to determine whether various requirements imposed by the New York Department of Environmental Conservation on persons involved in the loading, unloading and storage of hazardous waste incident to transportation are preempted by the Hazardous Materials Transportation Act.

Interest of the Petitioner

The Chemical Waste Transportation Institute (CWTI or Institute) is part of the National Solid Wastes Management Association, a not-for-profit association that represents waste service companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Members of the CWTI that operate in New York are precluded from loading, unloading and storing waste hazardous materials incident to transportation despite full compliance with the hazardous materials regulations (HMRs) unless certain conditions imposed by the New York Department of Environmental Conservation (DEC) are met. The CWTI asserts that the DEC restrictions on these activities are in contravention of the Hazardous Materials Transportation Act (HMTA).

DEC Requirements For Which A Determination Is Sought

Transporters[1] engaged in the loading, unloading, and storage of waste hazardous materials in transportation are required by the DEC to meet permit conditions imposed on TSDF storage operations.[2] An exception from the storage permit requirements is provided for the "storage"[3] or the "transfer"[4] of packaged freight between transport conveyances if the transporter complies with a number of requirements:

- The storage of the freight is limited to 5 calendar days. (6 NYCRR 372.3(a)(6) and 373–1.1(d)(1)(xv).)
- The storage is limited to facilities owned by the transporter. (6 NYCRR 373–1.1(d)(1)(xv).)
- A log is maintained of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the manifest document number. (6 NYCRR 373–1.1(d)(1)(xv)(a).)
- If the packaged freight contains free liquids or contains dioxin-bearing waste and is removed from the in-coming vehicle and stored on site prior to being reloaded, the storage area must be designed to meet secondary containment requirements. These requirements provide that:
- A base must underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.
- The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquid resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.
- The containment system must have sufficient capacity to contain 10 percent of the volume of containers or the volume of the largest container, whichever is greater, unless the containers do not contain free liquids.
- Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity to contain such run-on.
- Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in a timely manner in order to prevent overflow of the system.

(6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) (1) and (3).)

- If the packaged freight contains no free liquids or dioxin bearing wastes, and is removed from the in-coming vehicle and stored on site prior to being reloaded, the storage area must be:
- Sloped or otherwise designed and operated to drain and remove liquid resulting from precipitation; or
- The containers must be elevated or otherwise protected from contact with accumulated liquid.

(6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) (2) and (3).)

- The transporter must inspect the containers or transport vehicles at least daily for leaks or deterioration caused by corrosion or other factors, and keep a log of such inspections. (6 NYCRR 373–1.1(d)(1)(xv)(g).)
- Containers or transport vehicles containing ignitable or reactive wastes[5] may

[1] "Transporter" is defined as a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water. 6 NYCRR 370.2(b)(173) This DEC definition has the same meaning as the Federal requirement at 40 CFR 260.10.

[2] These permit conditions are extensive. A listing of minimum federal standards can be found at 40 CFR part 264. DEC standards are found at 6 NYCRR subpart 363 [sic, should be part 373].

[3] The DEC defines "storage incidental to transport" to mean " * * * on-vehicle storage not to exceed five days at the transporter's facility for the express purpose of consolidating loads (where such loads are not removed from their original packages or containers) for delivery to an authorized treatment, storage or disposal facility [TSDF]." 6 NYCRR part 364.1(c)(12).

[4] Loading and unloading operations are termed by the DEC "transfer incidental to transport," which is defined to mean "any transfer of waste material associated with storage incidental to transport where such material is not unpackaged, mixed or pumped from one container or truck into another." 6 NYCRR part 364.1(c)(14).

[5] EPA defines "ignitability" as (1) wastes in liquid form with a flash point of less than 60 C (140 F); (2) non-liquid wastes which are capable under standard temperature and pressure of causing fire through friction, absorption or moisture or spontaneous combustion; (3) ignitable compressed

not be stored less than 50 feet from the facility's property line. (6 NYCRR 373–1.1(d)(1)(xv) (h).)

• The area where loading and unloading of packaged freight takes place must meet the same secondary containment requirements outlined for storage areas as well as "all applicable NFPA requirements for storing ignitable wastes." (6 NYCRR 373–1.1(d)(1)(xv)(i).)

• The transfer of hazardous waste from one vehicle to another must be indicated on the Manifest as "Second Transporter." (6 NYCRR 372.3(a)(7)(ii).)

Several DEC regulations prohibit the loading and unloading of hazardous waste in transportation between DOT-authorized packagings at locations without DEC permits for the treatment as well as the storage of hazardous waste.[6] This prohibition is accomplished by forbidding transporters from removing, mixing or pumping hazardous waste from original packages or containers and repackaging such waste into another package or container, including transport vehicles. (6 NYCRR 364.1(c) (12) and (14), 373–1.1(d)(1)(xv) (c) and (e), and 372.3(a)(7)(i).)

Failure to comply with these storage and transfer requirements can result in penalties. Civil penalties not to exceed $25,000 a day may be imposed on persons committing first time violations. The penalties for subsequent violations may not exceed $50,000 a day. In addition, courts may enjoin such persons from continuing such violations and the permits issued to such persons to engage in hazardous waste transportation may be revoked or suspended or a pending renewal application denied.[7] We are unaware of any Institute member who has tested the resolve of the DEC to enforce such penalties and administrative sanctions. We are aware that the DEC does make periodic unannounced visits to transfer facilities to assess the compliance of such facilities. However, we would request that the DEC provide information to the docket on the extent of its enforcement program during the course of these proceedings.

The above referenced requirements are included in their entirety in the Appendix to this application.

Applicability Of The Hazardous Materials Transportation Act

The activities of "loading, unloading, or storage incidental" to the transportation of hazardous materials[8] are encompassed within the definition of "transportation" that underpins the scope of regulatory jurisdiction vested in the US Department of Transportation (DOT) by Congress through the HMTA.[9] Pursuant to this statutory mandate, DOT has promulgated a variety of regulations to assure the safe loading, unloading, and storage of hazardous materials in transportation that render the DEC provisions duplicative of and inconsistent with such federal standards.[10]

A basic premise of the HMTA is that uniformity equals safety. In 1990, Congress reauthorized the HMTA, reaffirming the premise that consistency in laws and regulations governing the transportation of hazardous materials is necessary to minimize the potential of risk to life, property, and the environment from hazardous materials incidents. Absent national consistency, the resulting divergent and conflicting requirements create an enormous burden for the regulated community, undermine the effectiveness of the HMTA, and potentially jeopardize the public safety.[11] In order to ensure uniformity, Congress empowered the DOT to preempt non-federal requirements that conflict with or present an obstacle to the accomplishment and execution of the HMTA or the HMRs, and in certain areas, preempt non-federal requirements that are not "substantively the same as" the federal standards.[12]

"Otherwise Authorized By Federal Law"

Although the overriding purpose of the HMTA is to enhance safety in the transportation of hazardous materials through uniformity of requirements and standards, Congress limited DOT's ability to enforce uniformity though its preemptive authority to the extent that such non-federal requirements are "otherwise authorized by Federal law."[13] Since the enactment of the 1990 amendments to the HMTA, the courts have acted to circumscribe the reach of the "otherwise authorized by federal law" provision. The Tenth Circuit Court of Appeals held that state requirements, which are not specifically authorized pursuant to other federal statutes, are not "otherwise authorized" simply because such federal statutes do not preempt such requirements.[14]

The DEC bases its authority to regulate the loading, unloading, and storage of waste hazardous materials in transportation on the Resource Conservation and Recovery Act (RCRA).[15] RCRA sets forth a number of requirements which attach to the storage of hazardous waste at hazardous waste management facilities.[16] However, implementing regulations of the US Environmental Protection Agency (EPA) expressly exempt transporters who hold waste during transportation or who own or operate "transfer facilities"[17] from these storage requirements and land disposal restriction requirements, as long as the waste is accompanied by a Uniform Manifest, is stored in containers that meet DOT packaging requirements (including tank cars and cargo tanks), and is held no longer than 10 days.[18] Transporters storing wastes in the course of transportation are also subject to EPA's discharge clean up requirements.[19] As a condition to receive authorization from EPA to administer the RCRA program within their jurisdictions, states must have requirements at least as stringent as the federal requirements.[20]

RCRA does not specifically address the loading or unloading of hazardous waste between DOT-authorized packagings or transport conveyances incident to transportation as opposed to loading or unloading wastes for purposes of treatment.[21]

gas as defined in 49 CFR 173.300; or an oxidizer as defined in 49 CFR 173.151. EPA defines "reactivity" as wastes with properties that (1) are normally unstable and undergo violent change without detonating; (2) react violently with water; (3) form potentially explosive mixtures with water; (4) when mixed with water, generate toxic gases, vapors or fumes; (5) are cyanide or sulfide bearing wastes which when exposed to pH conditions can generate toxic gases, vapors or fumes; (6) are capable of detonation or explosive reaction if subjected to a strong initiating source or heated under confinement; (7) are readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; (8) are a forbidden explosive as defined in 49 CFR 173.51, a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88. No 49 CFR citation has been updated by EPA since the finalization of HM–181, December 21, 1990. See 40 CFR 261.21 and .23.

[6] As with the storage permits, the requirements to obtain treatment permits are extensive. A listing of minimum federal standards can be found at 40 CFR part 264. DEC standards are found are 6 NYCRR subpart 363 [sic, should be part 373].

[7] New York Environmental Conservation Law 71–2705.

[8] The HMRs define "hazardous material" to include "hazardous wastes." For purposes of the HMRs, a "hazardous waste" is any material subject to the Uniform Manifest. 49 CFR 171.8.

[9] Public Law 93–633, Section 103(6).

[10] On similar grounds, the DOT found preempted requirements imposed by the City of San Jose, CA on the loading, unloading, and storage incidental to transportation of hazardous materials. 55 *FR* 8884 (March 8, 1990).

[11] Public Law 101–615, Section 2.

[12] Public Law 101–615, Section 13(a).

[13] Public Law 101–615, Sections 4(a)(4)(A) and 13(a).

[14] *Colo. Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1581 n.10 (10th Cir. 1991).

[15] Public Law 94–580.

[16] Public Law 94–580, Sections 3004 and 3005.

[17] "Transfer facility" means "any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation." 40 CFR 260.10.

[18] 45 FR 86966 (December 31, 1980). Also see, 40 CFR 263.12.

[19] 45 FR 86967 (December 31, 1980).

[20] 40 CFR 270.1(c)(2)(vi) and 271.11(e).

[21] RCRA does require permits of persons involved in the "treatment" of hazardous waste. "Treatment" is defined as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable for recovery, amendable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous." (Pub. L. 94–580, Section 1004(34).) EPA has distinguished between its rules implementing permit requirements for treatment operations involved in the bulking and containerization of different hazardous waste and the loading and unloading of hazardous waste between DOT-approved packagings to achieve efficiencies in transportation. "The bulking of characteristic hazardous waste shipments to achieve efficient transportation may result in incidental reduction of the hazards associated with that waste mixture. However, this incidental reduction may not meet the definition of treatment * * * because it is not designed to render the waste nonhazardous or less hazardous. Accordingly, such activity may not require a RCRA permit." See attached letter to Mr. Christopher J. Jaekels, GSX Government Services, Inc., from Sylvia K.

Continued

However, EPA implementing regulations "recognize that shipments of wastes may involve different types of transportation"[22] and clearly contemplate the loading and unloading of hazardous waste between transport conveyances. Rules dictating compliance with the Uniform Manifest provide for the transfer or delivery of hazardous waste to another transporter en route between generator and TSDF sites.[23]

EPA's implementing regulations also address the loading and unloading of hazardous waste between DOT-authorized packagings by providing that a "transporter" must comply with "generator" standards if the transporter "mixes hazardous waste of different DOT shipping descriptions by placing them into a single container."[24] The CWTI interprets this requirement to mean that any consolidation, mixing, or commingling of hazardous wastes from their original packagings to other DOT-authorized packagings that alters, with one exception, any aspect of the DOT hazardous materials description (including additional description requirements) obligates the transporter to comply with all generator requirements, including land disposal certifications and notifications. The DOT shipping description exception would allow for the addition or deletion of any "RQ" (reportable quantity) designation from the hazardous materials description depending on the final volume of waste in each packaging following the repackaging of the transferred waste. If the consolidation, mixing, or commingling results in "treatment" of the waste, the transporter would be subject to RCRA permit requirements for treatment operations. Notwithstanding the requirement that "transporters"[25] limit loading and unloading activities involving hazardous waste where the DOT hazardous materials description of the waste is not altered as noted to "transfer facilities," EPA does "not place any new requirements on transporters repackaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous waste at transfer facilities."[26]

In summary, the only non-HMTA hazardous waste loading, unloading and storage incidental to transportation requirements "otherwise authorized by federal law" are those which require that such activities be performed by persons in compliance with EPA transporter standards at "transfer facilities" within the 10-day storage time frame, and that transporters comply with Manifest/shipping paper and discharge clean up requirements, as necessary. All other federal requirements imposed on such activities arise from the HMTA and the HMRs. This deferral to the HMTA and the HMRs for the regulation of hazardous waste in transportation is based in RCRA which bars EPA from promulgating regulations applicable to transporters of hazardous waste that are inconsistent with the requirements of the HMTA and the HMRs.[27] The regulatory history implementing RCRA shows that the DOT and EPA were so concerned about the possibility that compliance with duplicative requirements could cause such inefficiency or confusion that they believed the HMRs are "capable of being modified under the HMTA to address the transportation hazards of waste materials and that the RCRA states the need for such a modification."[28] When EPA delegates its authority to issue regulations to a state, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[29]

While RCRA does not contain a procedure for prohibiting states from imposing requirements on the transportation of hazardous waste that are more stringent or broader in scope than those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA. The legislative history underpinning RCRA's grant of "more stringent than" authority to states shows that Congress intended to allow states to create rules "more stringent than" the federal standards only for the selection of hazardous waste disposal sites.[30] Additionally, requirements that are broader in scope than EPA's are not part of the federally-approved program.[31] EPA clarified, in a letter to CWTI concerning its grant of final authorization to California's hazardous waste program, that "State hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose; * * * in (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation."[32]

Efforts To Seek Alternative Resolution Of This Issue

In 1992, EPA chartered the Hazardous Waste Manifest Rule Negotiated Rulemaking Advisory Committee (Committee) to assist EPA in the development of a rule to improve and standardize the present hazardous waste manifest system. The Committee consists of federal, state, industry and public interest representatives. DOT also has a seat at the table. In the course of the Committee's deliberations, the "consolidation and commingling" or loading, unloading and storage of hazardous waste in transportation was debated. These issues were placed on the table because more than a dozen states, including New York, impose non-federally authorized restrictions on these activities. The Committee was unable to address issues related to the processing of Uniform Manifests during consolidation and commingling operations because some of its members believed any recommendations would lend "legitimacy" to such operations as a function of "transportation." At the same time, EPA stated that it deferred to DOT for a determination as to what "consolidation and commingling" activities would be permissible in transportation. While we do not believe that the final recommendations of the Committee with respect to the processing of the Uniform Manifest will affect the legitimacy or non-legitimacy of consolidation and commingling activities, we believe all parties will benefit from DOT's clarification about allowable activities involving the loading, unloading, and storage of hazardous waste incidental to transportation activities and that the Uniform Manifest revisions emanating from this process should facilitate the accomplishment of those allowable activities.

The DEC Loading, Unloading And Storage Incidental To Transportation Requirements Are In Conflict With The "Obstacle" Test And, To The Extent The DEC Requirements Are At Odds With The Requirements Of The Uniform Manifest, The "Substantively the Same As" Test

The HMTA provides several tests to determine the consistency of state requirements to federal standards. The DEC loading, unloading and storage incident to transportation requirements for packaged waste hazardous materials are in conflict with the "obstacle" tests, and the "substantively the same as" test as the DEC requirements affect the Uniform Manifest.[33]

- Five-day Storage: 6 NYCRR 372.3(a)(6) and 373-1.1(d)(1)(xv).

As noted above, RCRA allows hazardous waste to remain in storage incidental to transportation for a period of 10 days without triggering the regulations imposed on hazardous waste management facilities engaged in storage. The 10-day period was provided as a means to expedite shipments by allowing "shipments [to] be consolidated into larger units or shipments [to] be transferred to different vehicles for redirecting or rerouting."[34] The 10-day rule was also promulgated to account for "scheduling problems, weather delays, temporary closing and other factors which might cause unforeseen delays"[35] The HMRs require that rail carriers forward shipments of hazardous materials within 48 hours (Saturdays, Sundays and holidays excluded).[36] Other time limitations are not specified. However, the HMRs require that motor carriers transport hazardous materials without unnecessary delay.[37] The DEC five-

Lowrance, Director, Office of Solid Waste, EPA, dated March 1, 1990.

[22] 45 FR 86972 (December 31, 1980).

[23] 40 CFR 263.20(d), (f)(i) and (f)(iii)(A).

[24] 40 CFR 263.10(c)(2).

[25] Transporters who are engaged in the off-site transportation of hazardous waste must comply with EPA standards set forth at 40 CFR 263.

[26] 45 FR 86967 (December 31, 1980).

[27] P.L. 94-580, Section 3003(b).

[28] 43 FR 22626 (May 25, 1978).

[29] P.L. 94-580, Section 3006(b).

[30] 125 *Cong. Rec.* S13247-13250, Daily Ed., June 4, 1979. The courts have upheld this view. See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (Section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Servcs.* v. *City of San Diego*, 687 F. Supp. 1436 (S.E. Cal. 1988) (Citing *Ensco*).

[31] 40 CFR 271.1(i).

[32] Letter to Cynthia Hilton, CWTI, from Devereaux Barnes, EPA, October 29, 1992. (Copy attached.)

[33] 49 CFR 107.202 (a) and (b).

[34] 45 FR 86966 (December 31, 1980).

[35] 45 FR 86967 (December 31, 1980).

[36] 49 CFR 174.14(a).

[37] 49 CFR 177.853.

day storage restriction denies transporters the opportunity to take advantage of the additional five-day period provided by the Federal 10-day storage period in order to expedite non-rail shipments or to enhance the safety of those shipments by more efficient utilization of transportation equipment. As such, the restriction is an obstacle to the accomplishment and execution of the HMTA and the HMRs.

• Facility Ownership: 6 NYCRR 373–1.1(d)(1)(xv).

There is no HMR requirement that storage incidental to transportation be limited to facilities owned by the transporter. In fact, the EPA's preamble setting forth the "transfer facility" rule suggests otherwise. In that document, "transporters who hold waste during transportation" are distinguished from transporters "who own or operate transfer facilities."[38] RCRA sets forth liabilities for violations of the Act based on activities involving hazardous waste not on the ownership of the property where such activities take place. Most transfer facilities in other states where an ownership requirement does not exist are leased or rented. The DEC's restriction severely curtails the number of otherwise allowable locations where waste hazardous materials can be loaded, unloaded, and stored incidental to transportation, thus denying opportunities to accomplish efficiencies in transportation that would increase safety by reducing truck traffic either by better utilization of truck to truck capacity or by allowing transfers of freight to or from other modes of transportation, in particular rail. Thus, the DEC requirement that precludes the storage of packaged waste hazardous materials in transportation unless at facilities owned by the transporter creates an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Log Requirements: 6 NYCRR 373–1.1(d)(1)(xv)(a).

There is no HMR requirement that a log be maintained describing the time and date on which each container or transport vehicle of hazardous waste is received or shipped including cross-reference to each shipment's Manifest document number. In the EPA's preamble setting forth the "transfer facility" rule, the EPA states that a generator's desire for "prompt transportation and delivery of hazardous waste shipments * * * should operate to ensure that wastes will not be held in storage for lengthy periods by transporters."[39] We believe that the Uniform Manifest itself creates a sufficient paperwork trail to obviate the need for a log. If this requirement is not preempted, other non-federal jurisdictions might be inclined to require their own distinct recordkeeping requirements to document the movement of freight in transfer facility situations. Such paperwork is not necessary to assure the safe transportation of waste hazardous materials and the potential to cause delay in the transport of such materials renders the requirement an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Secondary Containment: 6 NYCRR 373–1.1(d)(1)(xv)(c)(1) referencing 6 NYCRR 373–2.9(f) and 6 NYCRR 373–1.1(d)(1)(xv)(h).

The DEC's secondary containment requirements—for packagings containing free liquids, solids, or dioxins either for storage or loading and unloading of packaged freight—are a direct challenge to the integrity of DOT packaging standards.[40] The HMRs were developed on the premise that packagings can be built to contain hazards under conditions normal to transportation. The HMRs guarantee packaging integrity through detailed packaging standards, segregation and separation requirements, and through prohibitions on certain types of materials transport.[41] Even when packages containing hazardous waste fail, the HMRs reference EPA requirements at 40 CFR 263.31 to clean up discharges. Motor carriers of hazardous waste are required by DOT to maintain financial responsibility to cover liabilities related to environmental restoration in the amount of $1 or $5 million.[42] The HMRs also provide for immediate notification in the event of a spill as well as provisions for the disposition of packagings which are found to be leaking.[43] In addition, the HMRs now provide for generic response plans for containers over 3500 gallons that are used to transport material with petroleum oil, including fractions and derivatives thereof.[44] Many hazardous wastes contains such oils, and such plans exist.

In short, DOT has determined that secondary containment requirements are not necessary to assure safety or protection of the environment during transportation. Additionally, EPA noted that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[45] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials.

In practice, industry conducts activities associated with loading, unloading and storage of waste hazardous materials in transportation on impervious surfaces. However, the requirements for sloping and spill/run-off containment are unnecessary. Even in instances where waste hazardous materials are transferred between DOT-authorized packagings, containment can be accomplished by alternative means such as absorbent booms or dip pans. If these requirements are allowed to stand, transportation efficiencies inherent in loading, unloading, and storage operations are foregone because of the absence of locations capable of meeting such standards. Thus, the likelihood of shipment delay is increased creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Inspections: 6 NYCRR 373–1.1(d)(1)(xv)(g).

The HMRs have no requirement for daily inspections to assess the condition of packagings or for written documentation of such inspections. While industry practice dictates that packagings be inspected for leaks on a daily bases, the potential burden of non-federally imposed inspection requirements, particularly as they relate to "written documentation" cannot be anticipated. If it is permissible for the DEC to require "at least" daily inspections, could another jurisdiction justify hourly inspections? What limitations can be placed on non-federal jurisdiction requirement for written documentation? It is one thing to require a written record generic stating that an inspection of the storage and loading/unloading area was done. It is quite another burden if the record keeping requirements are packaging specific. Moreover, how long may a non-federal jurisdiction require such records to be retained?

EPA noted its belief that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[46] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials. Unless these inspection requirements are preempted, they invite other non-federal jurisdictions to impose their own version of such requirements which could lead to confusion about the requirements that apply at various locations and may delay shipments pending compliance with non-federal inspection and inspection documentation requirements thus creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Facility Size: 6 NYCRR 373–1.1(d)(1)(xv)(h).

The HMRs have no requirement that packagings containing "ignitable" or "reactive" wastes must be stored at least 50 feet from the storage site property line. The segregation and separation provisions of the HMRs address safety concerns about the interaction of various hazardous materials not just "explosive/reactive" or "flammable/ignitable" in storage incidental to transportation.[47] There is no technical justification for the 50-foot standard for materials stored incident to transportation

[38] 45 FR 36966 (December 31, 1980).

[39] 45 FR 86966–7 (December 31, 1980).

[40] Transfer of waste hazardous materials between DOT-authorized packagings is precluded.

[41] 49 CFR 173, 177 subpart C, 177.821, 174.81, 174.100, and 174.102.

[42] 49 CFR part 387.

[43] 49 CFR 171.15, 177.854, and 174.48.

[44] 49 CFR part 130. Additionally, the Oil Pollution Act of 1990, P.L. 101–380, requires DOT to promulgate similar response plan requirements for hazardous substances. When these rules are finalized, it is anticipated that all hazardous wastes at least in bulk packagings will be subject to response plan requirements.

[45] 45 FR 86967 (December 31, 1980).

[46] *Ibid.*

[47] 49 CFR 177.848 and 174.81.

when, once on the road or in a transportation phase which does not involve storage, packagings no longer need to be kept 50 feet from property lines to assure safety. Additionally, EPA noted its belief that reliance on DOT packaging standards "should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility" and requested comment on "whether additional requirements should be imposed [at transfer facilities] * * *."[48] The absence of EPA action to impose additional requirements is evidence that such requirements are not necessary to assure safety in the transportation of waste hazardous materials. Unless these storage set-back requirements are preempted, they invite other non-federal jurisdictions to impose their own, but not necessarily identical, version of such requirements which could lead to confusion about which requirements apply at various locations thus creating an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• NFPA Standards: 6 NYCRR 373–1.1(d)(1)(xv)(i).

The DEC requirement that areas where "freight consolidation" or the loading and unloading of packaged hazardous materials must meet "all applicable NFPA [National Fire Protection Association] requirements for storing ignitable wastes" is without merit. There is no NFPA standard for "ignitable wastes." The closest standard, NFPA 30—Flammable and Combustible Liquids Code, specifically exempts the "transportation of flammable and combustible liquids" and the "storage of containers in bulk plants * * *."[49] Bulk plants are defined as "that portion of a property where liquids are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container."[50] The DEC requirement to comport with a non-existent standard is at best confusing and thus creates an obstacle to the accomplishment and execution of the HMRs and the HMTA.

• Manifest Requirements: 6 NYCRR 372.3(a)(7)(ii).

The Uniform Manifest is a shipping paper for purposes of the HMRs.[51] The Manifest is protected from the infringement of non-federal requirements that are not "otherwise authorized by federal law" by the "substantively the same as" preemption standard.[52] The DEC requirement obligating a transporter to enter in the space reserved for a "second transporter" information about the transfer of hazardous waste from one vehicle to another is not "otherwise authorized by federal law" nor is it "substantively the same as" any requirement of the Uniform Manifest. In fact, the EPA-chartered Hazardous Waste Manifest Rule Negotiated Rulemaking Advisory Committee specifically considered and rejected an effort to require notation by license plate number in the sections of the Manifest reserved for notation of subsequent transporters when vehicles transporting hazardous waste were changed.

• Repackaging: 6 NYCRR 364.1(c) (12) and (14), 373–1.1(d)(1)(xv) (c) and (e), and 372.3(a)(7)(i).

Over a dozen pages of the HMRs set forth specific loading and unloading requirements for hazardous materials.[53] In addition, persons involved in the loading and unloading of waste hazardous materials between DOT-authorized packagings are subject to those requirements of the HMRs that are imposed on shippers to properly classify, mark, label and placard the material, and comply with other such hazard communication standards.

The HMRs also provide that there be "no tampering with * * * a container [of hazardous materials] or the contents thereof nor any discharge of the contents of any container between point of origin and point of billed destination."[54] This provision has been cited as justification to prohibit the loading and unloading of waste hazardous materials between DOT-authorized packagings at transfer facilities because the final destination of hazardous waste shipments can only be the permitted TSDF identified on the Uniform Manifest. However, this argument does not distinguish between the Uniform Manifest/shipping paper and invoices for billing freight shipment charges. The Uniform Manifest is not an invoice, although it may be used as proof of delivery. A "billed destination" can be a location where any carrier transfers hazardous materials to another carrier and bills for that particular leg of the shipment's transportation. "Billed destination" is not necessarily synonymous with the arrival at the site of the shipment's consignment.

Despite full compliance with these requirements and applicable EPA standards, the DEC prohibitions on loading and unloading waste hazardous materials which involve repackaging such wastes incident to transportation are absolute.[55] The effect of the prohibition is to deny opportunities to achieve efficiencies in transportation that promote safety such as consolidating loads from cargo tanks to tank cars or pumping out packagings in order to bulk waste hazardous materials at multiple generator locations in route to TSDFs. Members of the Institute do not knowingly engage in the repackaging of non-like wastes because of the onerousness of having to comply with generator standards. Nevertheless, on occasion a transporter may have to comply with generator standards in those states which allow repackaging incidental to transportation because the wastes were misrepresented by the original generator(s). We do not contest the imposition of generator requirements in these instances. In such cases, however, no state should be able, as does New York, to penalize transporters because they failed to obtain hazardous waste facility treatment/storage permits. To the extent fungible products such as coal, petroleum or acids are repackaged to achieve efficiencies in transportation without obtaining permits, fungible hazardous wastes should be accorded the same opportunity.

The consequence of New York's or other states' attempts to shield their citizens from risks associated with the transportation of waste hazardous materials by precluding repackaging activities is that these activities are diverted to other jurisdictions as long as transportation efficiencies can still be achieved forcing the populations in those other jurisdictions to bear a disproportionate share of the risk inherent in such transportation. As noted, several states already impose such restraints on the loading and unloading of waste hazardous materials between DOT-authorized packagings. This situation has led to confusion about which standards must be met during the course of transportation and poses an obstacle to the accomplishment and execution of the HMTA.

The DEC Requirements Are Preempted by the HMTA and the HMRs Because They Apply to Waste Hazardous Materials Differently and in Addition to Requirements for Other Hazardous Materials

In 1980, a preemption provision relating to hazardous waste was added to the HMRs. This provision provides that requirements of a state are inconsistent with the HMRs if they apply because the materials are waste materials and apply differently from or in addition to the requirements of the HMRs.[56] In the preamble to the final rule establishing this section, DOT defined the term "inconsistent" to describe "the type of state * * * transportation safety regulation that is *preempted* by requirements under the HMTA."[57] (Emphasis added.) All of the above referenced DEC requirements apply solely to waste hazardous materials. No comparable requirements are imposed by the DEC, or other state agencies, on the transportation of non-waste hazardous materials despite the fact that in New York non-waste hazardous materials are stored in DOT-authorized packagings and transferred between transport conveyances and between

[48] *Ibid.*

[49] NFPA 30, Chapter 1–1.7.1 and Chapter 4–1.2(a). 1990 Edition.

[50] NFPA 30, Chapter 9. 1990 Edition.

[51] 49 CFR 171.3(c).

[52] 49 CFR 107.202(a)(3). Also, refer to PD–2(R) which found the manifest promulgated by the Illinois Environmental Protection Agency preempted because it was not "substantively the same as" the Uniform Manifest and the deviations were not "otherwise authorized" by federal law. 58 *FR* 11183 (February 23, 1993).

[53] Modal regulations for loading and unloading are located at 49 CFR parts 174–177. Specific requirements to assure the compatibility of mixed hazardous materials appear at 49 CFR 173.23(e).

[54] 49 CFR 177.834(h).

[55] The DEC "opportunity" to engage in loading, unloading, and storage activities incident to transporting waste hazardous materials if the transporter acquires waste management facility treatment/storage permits for transfer facility locations is a pretense. The resources necessary to obtain such permits run in the thousands of dollars and take years to finalize, if at all.

[56] 49 CFR 171.3(c). This section lists "certain areas of state * * * regulatory actions pertaining to hazardous waste which [DOT] believes would be disruptive of the national uniformity required in the identification of hazardous materials (including wastes) in transportation. Section 171.3(c) *does not list all the conditions under which it might view a State * * * law as "inconsistent"* * *.*" (Emphasis added.) 45 FR 34567 (May 22, 1980).

[57] 45 FR 34567 (May 22, 1980).

DOT-authorized packagings while in transportation.

Conclusion

The requirements of the DEC as outlined above, individually and as a whole, create an obstacle to the accomplishment and execution of the HMRs and the HMTA. The requirements for unauthorized entries on the Uniform Manifest fail to meet the requirements of the HMTA and the HMRs that non-federal shipping paper requirements be "substantively the same as" federal standards. Finally, the DEC requirements invite mischief and should be preempted to the extent that they single out waste hazardous materials from other hazardous materials for additional and different regulation.

The loading, unloading, and storage of hazardous materials under active shipping papers at locations other than the point of consignment is a basic function of transportation that is expressly authorized by Congress and regulated by the HMTA and HMRs. If the DEC believes that the federal requirements are deficient, opportunities exist to petition for rule changes.[58] However, unilateral state action cannot be tolerated in a transportation setting. The extent to which the DEC and other states have challenged the HMRs in this area of regulation deserves to be addressed.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to:

Thomas C. Jorling, Commissioner, Department of Environmental Conservation, 50 Wolf Rd., Albany, NY 12233

Respectfully submitted,

Stephen C. Hansen,

Chairman.

Enclosures

[FR Doc. 93-25296 Filed 10-14-93; 8:45 am]

BILLING CODE 4910-60-P

[58] 49 CFR 106.31.

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: October 1, 1993.

Samuel Y. Sessions,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 93-25369 Filed 10-14-93; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

International Creative Arts Exchanges for Public and Private Non-Profit Organizations; Clarification

AGENCY: United States Information Agency.

ACTION: Clarification of allowable costs in requests for proposals.

SUMMARY: The Creative Arts Exchanges Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs hereby clarifies and defines items of allowable costs under announcements of its discretionary grants program for private, non-profit organizations.

Clarification

Language and/or interpretation of language not withstanding, allowable costs in applications for awards to the Creative Arts Exchanges Division (E/DE), Office of Arts America, Bureau of Educational and Cultural Affairs under announcements in the **Federal Register**, vol. 57, No. 238, December 10, 1992, page 58544, and, Vol. 58, No. 101, May 27, 1993, page 30852 shall include but not be limited to:

1. International and domestic air fares; visas; transit costs; ground transportation costs;

2. Per diem. For foreign participants, organizations have the option of using a flat $140/day for US domestic per diem or the published Federal per diem rates for individual American cities.

(**Note:** Accompanying staff must use the published Federal per diem rates, not the flat rate.)

3. Escort-Interpreters. Interpretation for delegations is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any US travel expenses during the program itself. Salary expenses are covered centrally and are not part of a grantee's budget proposal.

4. Cultural allowances. Participants and the escort interpreters are entitled to a cultural allowance of $150 per person. Accompanying staff do not receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally may not exceed $250/day. Subcontracting organizations may also be used. The written agreement between the prospective grantee and subcontractor must be included in the proposal.

6. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

7. Rental of space needed for program activities is generally not to exceed $250/day.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner. Number of invited guests may not exceed the number of participants by more than a factor of two.

9. A return travel allowance. $70.00 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All participants will be covered under the terms of a USIA sponsored health insurance policy. The premium is paid by USIA, directly to the insurance company.

Dated: October 7, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-25322 Filed 10-14-93; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review; Statement of Accredited Representative in Appealed Case, VA Form 646

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following

proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 15, 1993.

Dated: October 4, 1993.

By direction of the Secretary

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Accredited Representative in Appealed Case, VA Form 646
2. The form is used by accredited representatives of veteran's service organizations to present argument to the Board of Veterans Appeal on behalf of appellants whom the service organization represents
3. Non-profit institutions
4. 37,343 hours
5. 1 hour
6. On occasion
7. 37,343 respondents

[FR Doc. 93-25316 Filed 10-14-93; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review; Request for Disinterment, VA Form 40-4970

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

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DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 15, 1993.

Dated: October 5, 1993.

By direction of the Secretary.

B. Michael Berger,

Director

Director, Records Management Service.

Extension

1. Request for Disinterment, VA Form 40-4970
2. The form is used in lieu of a court-order to request the removal of remains from a national cemetery. The information is used by VA to either approve or disapprove the disinterment request
3. Individuals or households
4. 13 hours
5. 10 minutes
6. On occasion
7. 77 respondents

[FR Doc. 93-25315 Filed 10-14-93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m. Tuesday, October 19, 1993.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Architectural Glazing Petition, CP 92-1

The Commission will consider petition CP 92-1 from O'Keeffee, Inc. requesting the Commission to extend the coverage of the Architectural Glazing Standard by removing the current exemption for wired glass used in "fire doors" and by revising the scope of the standard to include ceramic glass substitutes.

2. FY 1994 Year Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1994.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: October 12, 1993.

[FR Doc. 93-25515 Filed 10-13-93; 3:08 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, October 20, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

Crib Toys

The staff will brief the Commission on options for Commission action with regard to a rulemaking proceeding initiated in 1990 to consider strangulation hazards associated with crib toys.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: October 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93-25516 Filed 10-13-93; 3:08 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 21, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

2. Enforcement Matter OS#3485

The Commission will consider issues related to enforcement matter OS#3485.

3. Enforcement Matter OS#3073

The Commission will consider issues related to enforcement matter OS# 3073.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: October 13, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93-25517 Filed 10-13-93; 3:08 pm]

BILLING CODE 6355-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 20, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25518 Filed 10-13-93; 3:07 pm]

BILLING CODE 6210-01-P

Corrections

Federal Register
Vol. 58, No. 198
Friday, October 15, 1993

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.

FEDERAL COMMUNICATIONS COMMISSION

[Report No.1974]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

Correction

In notice document 93-24566 appearing on page 52312 in the issue of Thursday, October 7, 1993, in the 1st column, in the 12th line, "October 31, 1993" should read "October 22, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 93-23106 beginning on page 49312 in the issue of Wednesday, September 22, 1993, make the following correction:

On page 49313, in the first and second columns, remove the entry for Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee and the five paragraphs following.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89-050]
RIN 2115-AD35

Vessel Identification System

Correction

In proposed rule document 93-24210 beginning on page 51920 in the issue of Tuesday, October 5, 1993, make the following correction:

On page 51920, in the first column, in DATES:, in the second line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

federal register

Friday
October 15, 1993

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 173, 178 and 180

[Notice No. 93-20]

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Responses to questions.

SUMMARY: This document responds to frequently asked questions pertaining to requirements applicable to cargo tank motor vehicles. The intent of this document is to facilitate better public understanding and awareness. It contains information that may be particularly useful to the regulated industry, and State and local governmental officials involved in or regulating hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Hattie Mitchell, (Telephone 202-366-4488), Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh Street SW., Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION: As part of its implementation of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, RSPA promulgates regulations governing the safe transportation of hazardous materials in commerce. These regulations are contained in 49 CFR parts 106-180. Answers to questions concerning these regulations are issued by RSPA's Office of Hazardous Materials Safety (OHMS). The answers contained in this document are based on questions raised by industry. They pertain to requirements, applicable to cargo tank motor vehicles, contained in the Hazardous Materials Program Procedures (49 CFR part 107) and the Hazardous Materials Regulations (49 CFR parts 171-180).

Publication of these questions and answers is intended to promote a better understanding of, and improve compliance with, the HMR. This information also will be listed on RSPA's electronic bulletin board, the Hazardous Materials Information Exchange (HMIX). The HMIX may be accessed by calling the data telephone number, (708) 972-3275, or for personal assistance by calling the number, 1-800-PLANFOR (in Illinois, call 1-800-367-9592).

Issued in Washington, DC, on October 8, 1993 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Frequently Asked Questions Concerning Requirements Applicable to Cargo Tank Motor Vehicles

Part 107

Section 107.501

Q1. Are there any special requirements that must be met by a repair facility, based in Mexico or Canada, to test or inspect cargo tanks operating in the United States? Can the facility receive a CT number?

A1. No special requirements are imposed on repair facilities based in Mexico or Canada registering under section 107.501 *et seq.* Designation of an agent for service of process, as required by section 107.503(a)(7), applies to non-U.S. residents. RSPA has registered several Canadian facilities.

Q2. How does a company providing "mobile" testing and inspecting of customer cargo tanks register? The work is not done at a "facility." Is "mobile" testing authorized?

A2. A "mobile" facility can be registered if all other requirements are met. RSPA has registered a few individuals who work out of their homes or small offices and "deliver" inspection and test services at their customers' sites.

Q3. Are manufacturers and repairers of nonspecification cargo tanks subject to the registration requirements in subpart F of part 107?

A3. The registration requirements in subpart F of part 107 apply to persons who manufacture, assemble, inspect, test or repair DOT specification cargo tanks and cargo tanks subject to the terms of an exemption (see section 107.501). These requirements do not apply to persons who perform these functions on nonspecification cargo tanks, provided they are not exemption cargo tanks that must conform, with certain exceptions, to a DOT cargo tank specification.

Section 107.502(f)

Q4. The opportunity to designate an employee as a Registered Inspector under the grandfather provisions expired December 31, 1991. Has any thought been given to extending this date to allow qualified mechanics whose companies may not have registered them to perform functions as Registered Inspectors?

A4. RSPA has received a petition for rulemaking requesting that the December 31, 1991 deadline for submitting a registration statement be removed or, alternatively, that the registration period be reopened. The petition is under consideration.

Part 171

Section 171.8

Q5. A DOT 51 portable tank that is used to transport carbon dioxide, refrigerated liquid is permanently mounted on a truck chassis. Is the tank considered a portable tank or a cargo tank, and how must it be retested?

A5. A portable tank that is permanently mounted on a vehicle chassis meets the definition of a cargo tank. A "cargo tank," as defined in § 171.8, is a bulk packaging which is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle.

For the transport of carbon dioxide, refrigerated liquid, the tank must conform to all applicable requirements for an MC 331 cargo tank. Therefore, it must meet the periodic retest and inspection requirements in § 180.407. The cargo tank must conform in all aspects to the applicable specification structural requirements contained in § 178.337, including requirements in § 178.337-10 for overturn protection, valves and fittings protection, and rear bumpers.

Part 173

Section 173.24b(d)(2)

Q6. Does the maximum design density of lading apply to a non-hazardous material? For example, could a non-hazardous 14-pound per gallon product be transported in a 12-pound per gallon tank? Can a motor carrier cover the tank specification plate and transport these products?

A6. The HMR apply to transportation of hazardous materials in commerce; see § 171.1. These regulations specify authorized packagings and set minimum standards for authorized packagings, such as DOT specification cargo tank motor vehicles. Any usage outside the design parameters such as that described is not authorized. For example, § 178.340-10 certification plate requirements for MC 306, 307 and 312 include maximum product load (lbs). If a 5000 gallon tank is designed for a maximum product density of 12 pounds per gallon (ppg), the maximum product load is 60,000 lbs. This maximum product load cannot be exceeded regardless of whether the

lading is hazardous or non-hazardous. Thus, this 5000 gallon tank could carry only 4286 gallons of a lading which has a density of 14 ppg.

Sections 173.33, 178.320, 180.405(b), etc.

Q7. Does the term "DOT specification cargo tanks" include both the MC–300 series cargo tanks and the DOT–400 series cargo tanks?

A7. Yes, the term refers to both MC cargo tanks and DOT cargo tank motor vehicles.

Section 173.33(a)(2)

Q8. Section 173.33(a)(2) forbids loading hazardous materials on the same cargo tank motor vehicle if a mixture of the materials would result in an unsafe condition. Does this apply if a cargo tank has double bulkheads?

A8. Yes, § 173.33(a)(2) applies to cargo tanks with double bulkheads.

Q9. Is a cargo tank truck and a cargo tank trailer combination or a set of double cargo tank trailers considered to be "the same cargo tank motor vehicle?"

A9. Yes, they are considered to be the same "cargo tank motor vehicle." Section 171.8 defines a "motor vehicle" to mean a vehicle, machine, tractor, trailer, semitrailer, *or any combination thereof,* propelled or drawn by mechanical power and used on the highways in transportation of passengers or property. Paragraph 173.33(a)(2) is intended to prevent the transportation of two or more materials which, if mixed, would cause a vehicle fire, tank rupture or the release of toxic vapors. For example, if Product A and Product B are not compatible, transporting Product A in the cargo tank truck and Product B in an attached cargo tank trailer is prohibited. Examples of prohibited materials are nitric acid and fuel oil.

Section 173.33(a)(3)

Q10. A shipper is required to check a carrier's tank to ensure it is the proper specification for the hazardous material being loaded. Is the shipper required to check the tank for compliance with the requalification tests and inspections in part 180?

A10. If a cargo tank is supplied by a carrier, the offeror (shipper) is not required to check the tank for compliance with part 180, Hazardous materials often are loaded at bulk loading facilities, in cargo tank motor vehicles supplied by the motor carrier, without the offeror in attendance. In these instances, verification of a carrier's compliance with part 180 is not possible. The basic responsibilities of an offeror are found at § 173.22; paragraphs (a) (2) and (3) are pertinent to cargo tanks.

Q11. If a cargo tank has been filled and used for storage and has an inspection or test come due during the storage period, can the cargo tank be used to deliver the product to a customer, and then be returned to the owner for performance of the inspection or test?

A11. Yes, under §§ 173.33(a)(3) and 177.824, a specification cargo tank for which the prescribed periodic retest or reinspection is past due may be offered for transport and transported. However, such a cargo tank may not be *refilled and offered for transportation* until the retest or reinspection has been successfully completed. The intent of this provision is to facilitate movement of a cargo tank motor vehicle to a facility where the work can be done, without the need for an exemption.

Section 173.33(c)

Q12. If a 1 psi normal vent is not used, what is pressure relief setting?

A12. The set pressure is stipulated in individual DOT cargo tank specifications. Examples:

(a) MC 306, 307 and 312: In these specifications, the set pressure is stated either as an absolute value (for example, not less than 3.0 psig), or so as to limit pressure rise to 130–150 percent of design pressure or MAWP. (General requirements for maximum allowable working pressure (MAWP) are found at § 173.33(c). MAWP is defined at § 178.345–1(k).)

(b) DOT 406, 407 and 412: In these specifications, the general schedule for primary and secondary pressure relief systems is found at § 178.345–10 (d)(1) and (d)(2) respectively. Set pressure is stated in terms of percentages of the MAWP, with a tolerance of 10 percent. The vent capacity must be achieved at not more than the tank test pressure. In response to comments received during development of the HM–183 final rule, the pressure relief schedule for the DOT–406 was established at values differing from the general values. As a result, the pressure differential across the opening was unintentionally reduced to levels which made it very difficult to achieve adequate vent capacity, as pointed out by several commenters. In a notice of proposed rulemaking, RSPA proposed to revise this schedule in § 178.345–10. See HM–183C (58 FR 12316, March 3, 1993).

Sections 173.131, 173.242

Q13. Section 172.101 in the past referred to former § 173.131 for asphalt cargo tanks. Former § 173.131 allowed asphalt to be transported in nonspecification cargo tanks equivalent to an MC 306 or DOT 406 cargo tank with the exception of certification, manholes, venting, and emergency flow control. The specific bulk packaging requirements for asphalt have been moved to § 173.247. Section 173.247 requires asphalt to be transported in a specification cargo tank. What is required of cargo tanks transporting asphalt? Are existing cargo tanks "grandfathered"? Are asphalt tanks exempted from shell thickness testing?

A13. The exception in former § 173.131, which allowed transport of certain flammable asphalts in nonspecification cargo tanks, was inadvertently removed under HM–181. This error subsequently was corrected in a final rule published under HM–181 (57 FR 45446, October 1, 1992). In the § 172.101 Hazardous Materials Table, for the entry "Tars, liquid including road asphalt and oils, bitumen and cut backs," in column 7, Special Provision B13 was added. Also, § 173.247 was revised to permit continued use of cargo tanks manufactured prior to October 1, 1993, that do not conform to § 173.247. These cargo tanks must meet the closure requirements in paragraph (g) by March 30, 1995, as well as all applicable requirements in Part 173, subparts A and B. Asphalt cargo tanks not represented as DOT specification cargo tanks are not subject to any of the requirements in Part 180.

Section 173.131(a)(2)

Q14. This paragraph states that the design limits may not exceed 25 percent of the stress limit provided by the Aluminum Association. What are the design limits for stainless steel and mild steel?

A14. No limits are specified in Special Provision B13 for high temperature design stress of asphalt cargo tanks made of stainless steel and/or mild steel. However, § 173.24b, containing additional general requirements for bulk packaging, provides at paragraph (d)(1) that a bulk packaging may not be loaded with a hazardous material that is at a temperature outside of the packaging's design temperature range. For example, steel cargo tanks used to transport asphalt must be designed so that design stress limits are not exceeded as a result of the temperature of the asphalt.

Part 178—MC–300 Series Cargo Tanks

Section 178.320(b)

Q15. Is a manufacturer of MC 306, MC 307 and MC 312 cargo tanks required to have each cargo tank design type certified to the applicable specification

requirements by a Design Certifying Engineer?

A15. No, the DOT MC 306, 307 and 312 specifications do not require certification of each design type by a registered Design Certifying Engineer. However, any cargo tank design which is changed from the original design by stretching or rebarrelling must be recertified by a Design Certifying Engineer (see § 180.413(d)(3)).

Section 178.337–10(d)

Q16. Does the requirement that each cargo tank be provided with at least one rear bumper designed to protect the tank and piping apply to all cargo tanks or only to those tanks used to transport gasoline, fuel oil, and other petroleum distillates?

A16. The requirement that each cargo tank be provided with at least one rear bumper applies to all DOT specification cargo tank motor vehicles, regardless of the lading being transported.

Section 178.340–10(b)(2)

Q17. If a cargo tank is being operated as a multi-purpose tank, and the certification plate is stamped "MC307/MC312" to indicate the two specifications, should a multi-purpose plate be added so that it can be clearly distinguished as to what specification the cargo tank is operating under?

A17. Yes, a multi-purpose plate identifying the applicable specification under which the tank is operating must be displayed on the cargo tank.

Q18. Is there an exception that authorizes certification plates to be attached to the right side of the cargo tank?

A18. Yes, cargo tanks manufactured prior to July 1985 may have the certification plate attached to the right side of the cargo tank. See first sentence in § 178.340–10(b)(2).

DOT–400 Series Cargo Tanks

Section 178.345–3(g)(2)

Q19. What is meant by "skirting structure"?

A19. The term "skirting" is intended to describe any of a variety of lightweight elements used to dress up appearance, to divert road debris/water away from the tank, to provide fairings around wheel wells or cabinets, etc. Some hose carriers could be included.

Section § 178.345–9(b)

Q20. This paragraph contains requirements for hoses and couplings in regard to bursting pressures, but does not specify to what pressures the hose assembly must be tested, or how often an assembly must be tested. What requirements apply?

A20. Section 178.345–9(b) and (c) contain performance criteria for hoses, piping, stop valves, hose couplings, etc. Periodic leakage test requirements are contained in § 180.407(h) and maintenance and replacement requirements are found at § 180.413(c). The leakage test applies to "product piping with all valves and accessories in place and operative." This includes lading retention couplings and closures, but not hoses which are not authorized to contain lading during transit. Periodic testing of the bursting pressure of hoses is not required by the HMR.

Section 178.345–9(h)

Q21. Does this section prohibit the use of acrylic sight glasses?

A21. This section does not prohibit an acrylic sight glass provided "such attachment is located outboard of the lading retention system." Paragraph (f), covering requirements for gauging devices, also applies.

Section 178.345–10.

Q22. If all the pressure relief requirements are met, may additional pressure relief be provided at a higher pressure than specified for the required pressure relief?

A22. Yes.

Section 178.345–14(b)(2)

Q23. Is the test date in § 178.345–14(b)(2) the same as either the cargo tank certification date in § 178.345–14(c)(2) or the cargo tank date of manufacture in § 178.345–14(c)(4)?

A23. Under the various paragraphs in § 178.345–14, dates required on the name plate and specification plate are as follows:

(b)(2)—original test date.

(c)(2)—CTMV certification date, if different from the cargo tank certification date.

(c)(4)—cargo tank date of manufacture.

Each of these dates may be different.

Section 178.345–14(c)(8)

Q24. If a carrier has a lined cargo tank which will be used as a specification tank but not as a lined tank, should the carrier block or remove the lining information on the "spec" plate? Does this absolve the carrier from complying with § 180.407(f)?

A24. Yes, the specification plate should reflect the features of the cargo tank. If a cargo tank is not lined or is not used to transport ladings corrosive to the tank then a lining test (§ 180.407(f)) is not required.

Sections 178.346–13(c)(2) and 180.407(h)(2).

Q25. DOT allows a leakage test to be performed on gasoline cargo tanks in accordance with the Environmental Protection Agency's (EPA) "Method 27–Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" in certain geographical areas. Why is this test acceptable in some geographical areas and not others? In which geographical areas is EPA's Method 27 acceptable?

A25. The EPA Method 27 test is applicable to gasoline delivery tanks that are operated in jurisdictions identified in subpart C of 40 CFR part 81, where the release of gasoline vapors poses an environmental hazard. Delivery tanks operated in these jurisdictions must be equipped with vapor collection equipment. RSPA has simply authorized the test as an acceptable alternative to Part 180 leakage testing in order to avoid the imposition of essentially duplicate requirements. RSPA has proposed in HM–183C (58 FR 12316, March 3, 1993) to allow the use of EPA method 27 as an alternative leakage test for DOT 406 specification cargo tanks that are fitted with vapor collection equipment, and are intended for use in gasoline or benzene delivery service only, without regard to geographical location.

Part 180

Section 180.1

Q26. Does part 180 apply to IM 101 and IM 102 portable tanks?

A26. Subpart A applies to all types of packagings. Part 180 is intended to include provisions for the continuing qualification and maintenance (Q&M) of all container types, but currently contains only subpart E for cargo tanks.

Section 180.3

Q27. If a motor carrier transports hazardous materials exclusively in intrastate carriage and does not transport hazardous substances, hazardous wastes or flammable cryogenics, is the carrier required to maintain, test, repair, etc. the DOT specification cargo tanks in conformance with the current edition of HMR even if the State has not adopted the most current edition of the HMR?

A27. Yes, when a motor carrier uses a cargo tank *represented* by the tank specification plate as meeting a DOT specification, the cargo tank must conform in all respects to the applicable specification in part 178 under which it was manufactured and the requalification requirements in part 180. As provided by § 171.2(c), "no person

may represent or offer a packaging as meeting the requirements of this subchapter governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging is manufactured, fabricated, marked, maintained, repaired, or retested as appropriate, in accordance with this subchapter" (also see §§ 171.2(d) and 180.3). The requirements in parts 178 and 180 apply to a DOT specification cargo tank motor vehicle used to transport hazardous materials exclusively in intrastate commerce as well as to those used in interstate commerce.

Q28. Would an intrastate motor carrier who does not transport *any* hazardous materials but uses cargo tanks marked with a DOT specification number be required to maintain the tank in compliance with current 49 CFR requirements?

A28. Yes, any cargo tank *represented* by the tank specification plate as a DOT specification packaging must conform to all applicable requirements (see §§ 171.2(c) and 180.3(a)). However, when a DOT specification cargo tank is used to transport non-hazardous materials or hazardous materials not requiring the use of a specification cargo tank, the tank specification plate may be removed, obliterated or securely covered, as provided by § 180.405(j). If the plate is covered, the covering must be capable of remaining in place during transit. Removing, obliterating or securely covering the specification plate eliminates representation of the tank as a DOT specification packaging. When a cargo tank is represented as not meeting the specification by covering the plate, before the cargo tank can be represented again as a DOT specification by uncovering the tank specification plate, it must meet all applicable requirements in part 180.

Q29. Does an MC 306 cargo tank that is used only to transport fuel oil and water have to be maintained in accordance with the HMR?

A29. Yes, whether an MC 306 cargo tank transports hazardous material has no bearing if the cargo tank is represented as a DOT specification cargo tank. See also answers to above questions.

Q30. Does this section apply to "equivalent" nonspecification cargo tanks used to haul products such as asphalt?

A30. Part 180, subpart E applies only to DOT specification cargo tanks and cargo tank motor vehicles. This includes all MC and DOT specification cargo tanks. Unless specifically required, part 180 does not apply to nonspecification cargo tanks.

Section 180.403

Q31. The terms "corrosive to the tank/valve" and "shown through experience to be corrosive to the tank or valve" continue to generate confusion. Under what conditions must the fifth wheel plate be removed?

A31. It is the responsibility of a cargo tank owner, in conjunction with a Registered Inspector, to determine whether operating conditions are "corrosive to the tank/valve". The corrosivity of ladings such as crude oil and liquefied petroleum gas varies greatly in different geographical areas. For example, exposure time and temperature are major variables; indeed, many factors must be considered and evaluated locally. If it is determined that the lading is corrosive to the tank, the fifth wheel must be removed and inspected as required by § 180.407(d)(2)(ix).

Section 180.405(b)

Q32. Does part 180 apply to DOT specification cargo tanks of 3,000 gallon capacity or less used to haul flammable liquids?

A32. Yes, part 180 applies to all specification cargo tank motor vehicles.

Q33. On an MC 306 cargo tank of 2500 gallons capacity or less, what is the minimum compartment size that requires a manhole?

A33. An MC 306 cargo tank having a compartment capacity of 2500 gallons or less is not required to have a manhole (see § 178.341–3).

Section 180.405(c)(2)

Q34. Section 180.405(c)(2) allows pressure relief devices conforming to the DOT–400 series requirements to be placed on MC–300 series cargo tanks. Can DOT–400 series pressure relief devices be installed in newly manufactured MC 306, MC 307 or MC 312 cargo tanks and be certified to the applicable specification?

A34. Yes, § 180.405(c)(2) authorizes the use of DOT–400 series reclosing pressure relief devices on certain MC–300 series cargo tanks. This provision, however, does not permit relaxation of other aspects of the applicable MC cargo tank specification. For example, DOT 406 pressure relief valves may be installed on MC 306 cargo tanks, provided the minimum emergency venting capacities are met (§ 178.341–4(d)). Section 178.341–4(b) states that a normal vent must be set to open at no more than 1 psig while § 178.346–10(b)(2) states that a normal vent must be set to open at not less than 1 psig. Section 178.341–4(d) states that the vent shall be set to close when the pressure drops to 3 psig or below; whereas § 178.346–10(c)(1) states that the valve must close at no less than the MAWP which could be 3.3 psig. Modification of the pressure relief devices does not require changing nameplates.

Section 178.346–10(b)(2) states that normal vents must be set open at not less than 1 psig in order to prevent the venting of ladings having vapor pressures greater than 1 psig when transported in DOT 406 cargo tank motor vehicles equipped with normal vents.

Section 178.346–10(c)(1) refers to pressure relief devices as described at § 178.345–10; the venting capacity of these devices is much greater than that of normal vents.

Unlike the MC 306, the pressure relief valve schedules for all DOT–400 series specifications are related to the MAWP of each tank. RSPA proposes to revise the DOT 406 set pressure schedule in response to comments submitted by industry concerning difficulties experienced in meeting vent flow rates at low MAWPs. See NPRM, HM–183C (58 FR 12316, March 3, 1993).

Section 180.405(g)

Q35. Is it legal for a cargo tank motor vehicle with five 400 gallon compartments to have only fill openings and no manholes?

A35. Information on fill openings and manholes for a 400 gallon compartment may be found in the applicable DOT cargo tank specification. For example, MC 306 cargo tanks do not require a manhole unless the compartment capacity exceeds 2,500 gallons (see § 178.341–3). MC 307 cargo tanks must have a manhole of at least 15-inch inside diameter in each compartment, regardless of tank capacity (see § 178.342–3).

Section 180.405(h)

Q36. Does the requirement, contained in § 180.405(h)(2), that after August 31, 1995, a reclosing pressure relief valve may not release any lading in a pressure surge apply to MC 312 cargo tanks?

A36. Yes, if the original pressure relief valves are replaced as authorized at § 180.405(c)(2). However, there is no requirement to replace original equipment which meets the requirements in § 180.407 (g) and (h).

Q37. Do new reclosing pressure relief valves installed on MC 312 cargo tanks have to meet the conditions specified in § 180.405(h)?

A37. Yes, if a pressure relief valve is replaced as authorized at § 180.405(c)(2), the replacement valve

must meet the conditions specified in § 180.405(h). However, if the pressure relief valve is removed from the tank and repaired (for example, replacement of the valve seats or springs), such repair is not considered to be replacement.

Section 180.407

Q38. Must nonspecification and specification cargo tanks meet the periodic test and inspection requirements specified in part 180 when they are used to transport hazardous materials not requiring use of a specification cargo tank?

A38. Nonspecification cargo tanks are not subject to the requirements in part 180. The retest and inspection requirements prescribed in § 180.407 apply to any cargo tank that is represented as a DOT specification cargo tank. This requirement is applicable regardless of whether the cargo tank is used to transport hazardous or non-hazardous materials. However, when a DOT specification cargo tank is used exclusively in hazardous material service for which a nonspecification cargo tank is authorized, the specification plate on the cargo tank may be removed, obliterated or securely covered, as provided by § 180.405(j). If the plate is covered, the covering must be capable of remaining in place during transit. When a cargo tank is represented as not meeting the specification by covering the plate, before the cargo tank can be represented again as a DOT specification by uncovering the tank specification plate, it must meet all applicable requirements in part 180.

Q39. How are test and inspection requirements in § 180.407 applied to an MC 330 or MC 331 insulated cargo tank that is not equipped with a manhole?

A39. An insulated MC 330 or MC 331 cargo tank with no manhole is subject to the pressure, leakage, and thickness tests, as specified in § 180.407(c). Internal and external visual inspections are not required on an insulated cargo tank with no manhole; therefore, the tank would not be marked with an "I" or "V" (see § 180.407(d)(1)). However, as part of the required pressure test, visual inspection of other applicable components prescribed in § 180.407(d)(2)(ii)–(ix) is required.

Q40. Can either a hazardous material or a non-hazardous material be used in performing a hydrostatic test or a leakage test on a cargo tank?

A40. Section 180.407(g)(1)(viii) allows a hydrostatic test to be performed using water, or other liquid having a similar viscosity, at a temperature not exceeding 100°F. Therefore, a hazardous material meeting the stated criteria may be used as the test medium. Section 180.407(h)(1) provides that a leakage test may be performed on an MC 330 or MC 331 cargo tank using the hazardous material contained in the tank at the time of the test. On other specification cargo tanks, the leakage test can be performed using either a hazardous or a non-hazardous material. In selecting the test medium, consideration should be given to the safety of personnel and avoiding any contamination that may result in an unsafe condition.

Q41. What is the periodic test and inspection schedule for an MC 312 cargo tank that is uninsulated and unlined?

A41. Assuming the cargo tank is not vacuum-loaded, the periodic test and inspection requirements are as follows: (1) External visual inspection—annually; (2) internal visual inspection—every 5 years; (3) lining inspection—not required; (4) leakage test—annually; (5) pressure test—every 5 years; and (6) thickness test—not required, except that if the cargo tank is used to transport material that is corrosive to the tank material, the tank must be thickness tested every 2 years.

Q42. If a carrier performed an external visual inspection on a cargo tank on November 1, 1990, is the next (annual) visual inspection required by September 1, 1991, or by November 1, 1991?

A42. The Table of Compliance at § 180.407(c) lists 2 important time values:

(a) The date by which the *first test* must be completed, and

(b) The *interval period* for retest after the first test.

If a test was done before the *first test* date, the next test must be done prior to the *interval* date.

In the example cited, an external visual inspection performed on November 1, 1990 must be repeated before November 1, 1991 (unless the cargo tank is loaded by vacuum and has a full opening rear head). In short, the *interval period* prevails. If the inspection was done on August 1, 1990, it must be repeated before September 1, 1991 as a *first test*, and annually thereafter.

Q43. If a required 5-year pressure retest was performed on an MC 331 cargo tank on November 1, 1989, is the next retest required before November 1, 1994, or September 1, 1991?

A43. The next pressure test is due no later than November 30, 1994.

Q44. If a cargo tank was marked "H" in the past for a hydrostatic test, can it be remarked "P" for pressure test with the same date?

A44. Marking requirements at § 180.415 apply from the time of the *first test* under § 180.407(c). RSPA sees no reason to change "H" to "P" under the conditions stated, but would not object if all requirements of part 180 have been met on a prior pressure test.

Q45. What inspection and retest requirements apply to nonspecification vacuum-loaded cargo tanks manufactured under DOT exemptions?

A45. As specified in the exemptions, vacuum-loaded cargo tanks must be designed and constructed in full conformance with the MC 307 and MC 312 cargo tank specification, with certain exceptions, and be tested and inspected as prescribed for the applicable specification. The test and inspection frequency for MC 307 and MC 312 cargo tanks has been increased from what was previously a two-year schedule. Section 177.824 requires all specification cargo tank motor vehicles to be tested and inspected as prescribed in 49 CFR part 180. The vacuum-loaded waste cargo tanks authorized under exemptions are subject to the test and inspection schedule contained in § 180.407(c), in place of the previous two-year schedule. Some exemptions have been updated to reference requirements in part 180. RSPA has taken action to inform all exemption holders of the applicable requirements. (See also requirements of § 180.405(f).)

Section 180.407 (c) and (f)

Q46. Is a lining inspection required for cargo tanks in crude oil or lube oil service that have a painted-on internal coating?

A46. Certain hazardous materials which are not classed as corrosives, including some crude oils and lube oils, may be corrosive to the tank; thus, subject to thickness testing under § 180.407 (c) and (i). The corrosivity of ladings such as crude oil and liquefied petroleum gas varies greatly in different geographical areas. For example, exposure time and temperature are major variables; indeed, many factors must be considered and evaluated locally. If a coating is applied to protect the cargo tank shell from the lading, then the cargo tank is subject to the lining test. However, if it is applied to protect product purity, then a lining test is not required. The determination of whether operating conditions are "corrosive to the tank/valve" is the responsibility of the cargo tank owner and a Registered Inspector.

Q47. Is a cargo tank required to be thickness tested if it is used to transport Class 8 (corrosive) material, even if that material is not corrosive to the tank? The table at § 180.407(c) states that all

unlined cargo tanks in corrosive service, except MC 338 cargo tanks, should be thickness tested. This is inconsistent with the language used in § 180.407(i) which states that the shell and head must be thickness tested if the tank transports materials corrosive to the tank.

A47. The intent of § 180.407(c) is to require thickness testing for cargo tanks used to transport materials "corrosive to the tank" (if authorized) as stated in § 180.407(i).

Section 180.407(d)(1)

Q48. This section provides that when insulation prevents external visual inspection, the cargo tank must be given an internal visual inspection in accordance with § 180.407(e). If an internal inspection is used to satisfy this requirement, do the other minimum external visual inspection requirements in § 180.407(d)(2) (ii) through (ix) have to be satisfied, and does the cargo tank have to be marked with a "V"?

A48. Yes, in both cases, except that an insulated MC 330, MC 331 or MC 338 is not subject to the internal visual inspection.

Q49. What inspection and retest requirements apply to an MC 331 insulated cargo tank used in chlorine service?

A49. For the cargo tank described, the table found at § 180.407(c) calls for the following:

Internal visual inspection—each year
Leakage test—each year
Pressure test—every 2 years
Thickness test—every 2 years

RSPA has proposed to increase the interval for the leakage test for cargo tanks in chlorine service to two years. See HM-183C (58 FR 12316, March 3, 1993).

Section 180.407(d)(2)(vii)

Q50. This section refers to parts 393 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) and part 571 of the Federal Motor Vehicle Safety Standard (FMVSS). Must all provisions of the referenced parts be met during the cargo tank external inspection? Many of these go far beyond the cargo tank, and are not functions performed by most commercial tank repair facilities.

A50. Parts 393 and 396 of the FMCSR and part 571 of the FMVSS are separate requirements of the DOT, administered by the Federal Highway Administration and the National Highway Traffic Safety Administration, respectively. The text of § 180.407(d)(2)(vii), referencing these parts, was removed under HM 181/189 (57 FR 45447, October 1, 1992).

Sections 180.407(d)(2)(ix) and 180.407(g)(1)(iii)

Q51. An upper coupler must be removed so that the areas covered by the upper coupler can be visually inspected. A majority, if not all, of the insulated cargo tanks have insulation and closeout plates installed in the framing above the upper coupler. Removing the upper coupler would not expose the tank shell or head for external inspection. Must the upper coupler be removed on insulated cargo tanks and, if it must be removed, what is to be inspected?

A51. If a cargo tank configuration makes it impossible to comply with the external visual inspection requirements (for example, because of "insulation and closeout plates"), the tank must be given an internal visual inspection; see §§ 180.407(c) Table, 180.407(d)(1) and 180.407(e). The internal visual inspection must include the shell of the tank and any structural members which are normally covered by the upper coupler. RSPA anticipates that new designs will facilitate removal of components which interfere with visual inspection.

Section 180.407(d)(2)(ix)

Q52. If an internal visual inspection is performed on a cargo tank used to transport materials corrosive to the tank, does the upper coupler have to be removed? Also, does the upper coupler have to be dropped every two years on lined cargo tanks used to transport "lading corrosive to the tank"?

A52. Yes, for cargo tanks transporting lading corrosive to the tank, the upper coupler must be removed and inspected at least once every two years as set forth in § 180.407(d)(2)(ix), which covers *external* visual inspection requirements.

Q53. If a tank infrequently transports product "corrosive to the tank", does this section apply?

A53. Yes.

Section 180.407(e)(2)(ii)

Q54. If a cargo tank is lined, does the lining test suffice for the internal test? If the tank is marked "K" for the lining test, can it also be marked "I" for the internal visual inspection?

A54. A lined cargo tank is subject to § 180.407 (e) and (f) and must be marked for each test. The markings verify that the required inspections and tests have been completed successfully.

Section 180.407(f)

Q55. Some linings, such as Herosite, are used to protect the product from the tank, rather than the tank from the product. Do tanks with such linings have to be inspected?

A55. No, only when the lining is used to protect a tank that is used to transport ladings corrosive to the tank.

Q56. Is an epoxy coating (approximately 12 mills thick dry) that is installed in some MC 306 and MC 307 aluminum and steel tanks considered a lining or cladding?

A56. The epoxy coating described would be considered a lining if it is used to protect the tank from materials corrosive to the tank/valve and must be inspected as prescribed by § 180.407 (e)(2)(ii) and (f). A cladding is a metal that has been bonded with another metal (for example, nickel clad steel); it is not considered a lining.

Q57. If a cargo tank owner is transporting a lading that is considered corrosive to the tank shell, but does not require a CORROSIVE placard, is the thickness test required every two years?

A57. Yes, if the material is corrosive to the tank/valve, the thickness test is required every 2 years. However, if the cargo tank measures less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, the tank must be tested annually (see § 180.407(i)(1)).

Section 180.407(g)

Q58. Section 180.407(g)(1) requires that external and internal visual inspections must be performed as a part of the pressure test. Some companies wish to register with DOT and perform their own visual inspections, but not the pressure test. Is a company required to perform the pressure test and the visual inspection or may, for example, Company A accept the visual inspection results of Company B to satisfy the requirements of this section?

A58. Separately registered facilities may perform the external and internal visual inspections and pressure tests if done at the same time. RSPA has proposed to revise § 180.409(b) to clarify that the visual inspections, when performed as part of the pressure test, must be done by a Registered Inspector. See HM-183C (58 FR 12316, March 3, 1993).

Section 180.407 (g) and (h)

Q59. If a cargo tank is pressure tested, can the cargo tank be marked as successfully passing for the annual leakage test, or must a separate leakage test be done? If a separate leakage test must be done, why is it required?

A59. The pressure test (§ 180.407(g)) and the leakage test (§ 180.407(h)) may be done at the same time, but all requirements must be met for each test. The pressure test is intended to test structural integrity while the leakage test is intended to detect leaks. The

pressure levels prescribed and the acceptance criteria are different for each type of test.

Section 180.407(g)(1)(ii)

Q60. All reclosing pressure relief valves are required to be removed from a cargo tank for inspection and testing. Is the pressure actuated vent prescribed in § 178.341–4(d)(2) considered a reclosing pressure relief valve? Must it be tested for conformance to § 178.341–4(d)(2); that is, set to open at not less than 3 psig and close when the pressure drops to 3 psig or below?

A60. Yes, MC 306 cargo tank pressure actuated venting devices are considered reclosing pressure relief valves. These valves must be tested for conformance with § 178.341–4(d)(2) as stated in the question above (see § 180.407(g)(1)(ii)(A)).

Q61. Section 180.407(g)(1)(ii)(A) states "Each reclosing pressure relief valve must open at the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification." Pressure relief valves (pressure actuated vents) installed on MC 306 cargo tanks do not have a required set pressure. The only requirement is that the pressure actuated vent open at not less than 3 psig (§ 178.341–4(d)(2)) and the closing pressure may be any pressure below 3 psig. Typically pressure relief valve settings may be anywhere from 3.0 to 3.5 psig. As applicable to MC 306 cargo tanks, does this mean only that the pressure actuated vents may not open at less than 3 psig?

A61. Yes, this is correct. MC 306 specification requirements apply.

Section 180.407(g)(1)(iii)

Q62. If an upper coupler was removed for inspection six months earlier, does it have to be removed for inspection when a pressure test is performed?

A62. Removal of the upper coupler for external inspection is part of the pressure test (§ 180.407(g)). On most cargo tanks that means every 5 years. Severe service conditions may make it prudent that an owner conduct more frequent inspections and tests of the type set forth by DOT, or perform additional types of inspections and tests, but the "minimum requirements" of the regulation must be met.

Q63. When welding is performed on a cargo tank wall and the tank is pressure tested, the upper coupler must be removed for inspection. However, if the cargo tank is in corrosive service, the upper coupler does not have to be removed for inspection. Does this make sense?

A63. If repair welding is done on a truck-mounted cargo tank, or on a cargo tank (compartment) which does not include an upper coupler, there is no need to remove the upper coupler. If a cargo tank is used to transport lading corrosive to the tank, the upper coupler must be removed and inspected once every two years (see § 180.407(d)(2)(ix)).

Section 180.407(g)(1)(v)

Q64. Does an owner with a fleet of twenty MC 307 cargo tanks have until September 1, 1995 to pressure test these units?

A64. No. An owner of five or more specification cargo tanks had to start pressure testing at least 20 percent of the tanks in his ownership each year beginning in 1991. An owner who has fewer than five specification cargo tanks has until August 31, 1995 to pressure test these units.

Section 180.407(h)(1)

Q65. The only description of the leakage test is that the test pressure must be held for 5 minutes. What is the criteria for pass or failure? If each weld seam and mechanical connection must be soaped for bubbles, this will be an all day test.

A65. Registered inspection facilities are capable of determining whether leakage occurs and locating it in various ways. The pressure and time requirements are performance related, not based on the technique used. In some cases, soap bubbles might be the best technique for the job.

Q66. Can cargo tanks (for example, MC 330 and MC 331) that have a design pressure of 265 psig with a maximum operating internal pressure of 175 psig, based on high ambient temperature, used in dedicated service for liquefied petroleum gas and anhydrous ammonia, or interchangeably in both services, be pressure tested at 150 psig?

A66. No. Section 180.407(h)(1)(i) provides that a cargo tank with a MAWP of 100 psig or greater may be leak tested at its maximum normal operating pressure provided it is in dedicated service(s). Because the maximum normal operating pressure of the cargo tank is sometimes as high as 175 psig, it must be leak tested at no less than 175 psig. Environmental factors and operating procedures greatly influence the maximum (annual) normal operating pressure.

Section 180.407(h)(2)

Q67. The use of EPA Method 27 as an alternative leak test "where applicable" has generated many questions. How does a carrier determine if he is in such an area? Is it where the cargo tank is based, the cargo tank is operated, or the test conducted? If a cargo tank tested by Method 27 in a "where applicable" area is transferred to another area, does it have to be retested in accordance with § 180.407(h)(1)? Can Method 27 be used on MC 306 cargo tanks that are not used to transport gasoline? Has any thought been given to making Method 27 an acceptable alternative everywhere?

A67. The EPA Method 27 test is applicable to gasoline delivery tanks that are operated in jurisdictions identified in subpart C of 40 CFR part 81, where the release of gasoline vapors poses an environmental hazard. Delivery tanks operated in these jurisdictions must be equipped with vapor collection equipment. RSPA has simply authorized the test as an acceptable alternative to part 180 leakage testing in order to avoid the imposition of essentially duplicate requirements. RSPA has proposed in HM–183C (58 FR 12316, March 3, 1993) to allow the use of EPA Method 27 as an alternative leakage test for DOT 406 specification cargo tanks that are fitted with vapor collection equipment, and are intended for use in gasoline or benzene delivery service only, without regard to geographical location.

Section 180.407(i)

Q68. How do these regulations, such as thickness testing, apply to fiberglass cargo tanks built under exemption?

A68. Fiberglass cargo tanks are manufactured under DOT exemption. The exemption requires cargo tanks to be retested and inspected as prescribed for DOT specification cargo tanks. Therefore, fiberglass cargo tanks are subject to applicable portions of part 180 and to any special provisions of the exemption. For example, periodic acoustic resonance testing may be required by the exemption.

Q69. Are cargo tanks used to transport anhydrous ammonia (NH3) required to be thickness tested?

A69. If experience has proven that a particular product is corrosive to the tank/valve, the cargo tank must be thickness tested.

Section 180.411

Q70. Is there anything in part 180 that requires inspection of a cargo tank for length of dents, cuts, digs, or gouges, or which requires any corrective action?

A70. Subpart E of part 180 does not deal with the length of dents, cuts, digs or gouges, but rather with the depth of the defect (see § 180.411(b)).

Q71. How does RSPA intend CGA Pamphlet C–6 to be used in cargo tank

inspection, maintenance, or repair? Is this entire publication incorporated by reference, or is the publication just to be used for informational purposes?

A71. RSPA intends that CGA Pamphlet C–6 be used as reference material for definitions and measurement techniques.

Section 180.413

Q72. Does the HMR prohibit the use of patches or overlays in repair of specification cargo tanks or ASME cargo tanks?

A72. RSPA neither endorses nor prohibits specific specification cargo tank repair procedures. However, use of "patches or overlays" is not recommended. The National Board of Boiler and Pressure Vessel Inspectors exercises control over repair of ASME vessels.

Q73. A cargo tank motor vehicle's nameplate indicates it has four compartments. The owner of the vehicle drills holes in the bulkheads between each compartment so the tank functions as if it were a single compartment cargo tank. What change, if any, should be made to the nameplate, and who is authorized to change the plate?

A73. Each "compartment" is a separate cargo tank. The action described converts these bulkheads into baffles and reduces the number of cargo tanks on the cargo tank motor vehicle, resulting in a design change. Nameplates and certification documents must be changed to describe the modified vehicle. The person performing the modification must adhere to § 180.413, including changing nameplates. RSPA has proposed that, if a modification results in a design change, a Design Certifying Engineer must approve the design of the modified cargo tank and a Registered Inspector must certify the modified cargo tank (proposed § 180.413(e)(5); 58 FR 12327).

Q74. Do the ASME qualified weld procedures apply to non-ASME cargo tanks, for example, MC 306?

A74. Yes, welding performed on a non-ASME cargo tank that meets a DOT specification must be performed by a manufacturer who holds an ASME Certificate of Authorization for use of the ASME "U" stamp or a repairer who holds a National Board Certificate of Authorization for the use of the "R" stamp (see § 107.503). To qualify for an ASME "U" stamp or an National Board "R" stamp, the manufacturer or repairer must be certified for each type of weld procedure that will be performed. As a part of the quality control program, all cargo tank welding procedures must be in accordance with the ASME Code.

Section 180.413(b)

Q75. If a cargo tank has been repaired, do external and internal inspections have to be performed before pressure testing the tank?

A75. By definition, "repair" involves welding on the cargo tank wall. Compliance with § 180.413 is required, particularly paragraphs (b)(3) and (4). External and internal inspections are not specifically required by the HMR; nonetheless, it is a good practice, at a minimum, to visually inspect the area both externally and internally, before and after the weld repair.

Q76. A pressure test, including an external and an internal inspection, was performed on a cargo tank in accordance with § 180.407(g). The next day the driver backed up the cargo tank and punctured a hole in the rear compartment. What is required to repair the puncture? Are the pressure relief vents on the repaired compartment required to be bench tested?

A76. The scenario described is addressed in § 180.407(b), which states that the tests and inspections prescribed in § 180.407 are required for a repaired cargo tank (compartment). Section 180.413 contains additional requirements for repair operations. See also other Q&A's to § 180.413(b).

There is no reason to bench test all pressure relief vents unless some mitigating circumstances are involved, such as accident damage to the reclosing pressure relief valves.

Q77. For a cargo tank that has been repaired, can a visual inspection be performed only in the area of the repair?

A77. Paragraphs (b)(1) and (b)(2) apply to inspections and tests under certain stated conditions *prior to repair.* Paragraphs (b)(3) and (b)(5) also apply prior to any repair, while (b)(4) may or may not relate to repair. See § 180.413 for additional information on repair, modification, stretching and rebarrelling.

Q78. Section 180.413(b)(4) states that the suitability of a repair must be determined by testing prescribed in the applicable specification, which would be a pressure and/or leakage test. For a DOT 406 cargo tank motor vehicle, would testing be required under § 178.346–13?

A78. Paragraph (b)(4) addresses repair and modification affecting the structural integrity of a cargo tank. A pressure test is intended to provide a test of structural integrity; therefore, pressure testing in accordance with § 178.346–13(b) is appropriate for a DOT 406 cargo tank motor vehicle. However, for a minor repair not affecting structural integrity, a leakage test in accordance with § 178.346–13(c) could be acceptable. This decision would be made by the cargo tank owner and the Registered Inspector.

Section 180.413 (d)(2)(v) and (d)(3) .

Q79. What information must be marked on the supplemental specification plate and manufacturer's certificate which must be issued when a cargo tank is stretched or rebarrelled?

A79. When "stretching or rebarrelling" a cargo tank results in a change to the information marked on the original (or existing) specification plate, the plate must be altered to reflect the new information. Similarly, if this "stretching and rebarrelling" changes the original approved design, it must be recertified by a Design Certifying Engineer.

Section 180.415

Q80. This section states that cargo tanks must be marked with the test date (month and year) followed by the type of inspection (for example, 10–91 VK). Is this the only sequence that may be used? For example, is it acceptable to mark a cargo tank "VK 10–91"?

A80. The prescribed *sequence* of date and type of markings at § 180.415 has been removed under HM 181/189 corrections (57 FR 45447, October 1, 1992).

Q81. Section 180.415 does not exempt newly manufactured cargo tanks from the test and inspection markings. Because some tanks may be in inventory for a period of time before sale, may a manufacturer of a newly manufactured cargo tank apply the markings specified in § 180.415(b), using the date of delivery to the customer?

A81. Paragraph 180.415(a) states that the markings are to be applied to cargo tanks successfully completing the test and inspection requirements of § 180.407. Section 180.3, containing purpose and scope, states that Part 180 prescribes requirements pertaining to maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the *continuing qualification and use* of a packaging. Newly constructed cargo tanks may be marked in accordance with § 180.415 if tested in accordance with § 180.407, but such markings are not required. The cargo tank manufacturer is required to mark the original test date on a newly constructed specification cargo tank (see §§ 178.337–17, 178.340–10 and 178.345–14). After a cargo tank has been constructed, marked and certified, the cargo tank motor vehicle must be tested and inspected in accordance with the schedule shown in the table in § 180.407(c). The first such

requalification test or inspection must be performed, at the interval period shown in the table, after the original test date. The earliest date shown is 6 months after the certification date.

Q82. If a cargo tank manufacturer decides to mark a newly constructed cargo tank motor vehicle with § 180.415 markings, are the tests and inspections performed in accordance with § 180.407 or with part 178 specification requirements? Also, is a written report required to be completed in accordance with § 180.417(b)?

A82. Section 180.415(a) states that the specified markings are to be applied to cargo tanks successfully completing the test and inspection requirements of § 180.407. In addition, §§ 180.2 and 180.3 state that any person who performs a function prescribed in Part 180 or marks a packaging as meeting the requirements of Part 180 shall do so in accordance with that part. If a manufacturer elects to perform the tests or inspections and marks the cargo tank to show the tests or inspections were successfully completed, the written report specified in § 180.417(b) also must be completed.

Q83. Is there any provision for marking a tank to indicate that an upper coupler has been removed for inspection? Some carriers/manufacturers have marked their tanks UC or UP with the date the work was done. Would such markings constitute a violation of this section if presented with the other test dates?

A83. There is no provision for marking a cargo tank motor vehicle to indicate removal of the upper coupler for inspection. The *record of inspection* should cover this operation. The marking described is not required, but neither is it prohibited.

Section 180.417(a)(1)

Q84. Each owner of a specification cargo tank is required to retain the manufacturer's data report or certificate and related papers throughout the period of ownership of the specification cargo tank and for one year thereafter. If the owner is the motor carrier operating the cargo tank, would the manufacturer's data report be acceptable in place of a manufacturer's certificate and related papers? Would it make a difference if the cargo tank is an ASME tank?

A84. As stated in § 180.417(a)(1), a motor carrier who is the owner may use either the manufacturer's data report or the manufacturer's certificate and related papers *certifying that the specification cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification.* The document certifying a cargo tank as meeting a DOT specification is identified as a manufacturer's certificate. When a cargo tank is constructed and stamped in conformance with the ASME Code, the document certifying it as an ASME tank is identified as a manufacturer's data report. If a DOT specification cargo tank also is an ASME tank, the motor carrier must have documentation to support both.

Sections 180.417(a)(2) and 178.337–18(b)

Q85. Section 180.417(a)(2) requires a motor carrier who is not the owner of a specification cargo tank to retain a copy of the manufacturer's certificate and related papers at its principal place of business. Can a motor carrier choose to retain only copies of the manufacturer's data reports? Former § 177.814 permitted a motor carrier to retain either document.

A85. Section 180.417(a)(2) requires a motor carrier who is not the owner to retain a copy of the vehicle certification report; that is, the applicable document certifying that a cargo tank was manufactured and tested in accordance with the applicable specification. The manufacturer's data report may not be substituted for the manufacturer's certificate. Refer also to the Q&A to § 180.417(a)(1).

Section 180.417(a)(3)(ii)

Q86. This section implies that owners of ASME Code stamped cargo tanks manufactured before April 22, 1994, must retain both the manufacturer's certificate and the manufacturer's data report. Is it a violation if the owner retains only one of these documents?

A86. Yes. For an ASME tank, an owner must have the manufacturer's data report. In addition, the owner must have the manufacturer's certificate, the alternative report authorized in § 180.417(a)(3)(ii), or the competent testing agency's certificate authorized in certain obsolete specifications, for example, § 178.330–18 for MC 310 cargo tanks. See Q&A to § 180.417(a)(1).

Q87. Can a manufacturer's certificate serve as the test and inspection report specified in § 180.417(b)?

A87. No. The manufacturer's certificate certifies that a cargo tank motor vehicle was manufactured and tested in accordance with the application part 178 specification. The test and inspection report certifies that a cargo tank successfully passed the continuing qualification inspections and tests prescribed in part 180.

Q88. Can one test and inspection report be completed when multiple tests and inspections are performed on a cargo tank under § 180.407?

A88. Yes. A single test and inspection report may be used when multiple tests and inspections are performed under § 180.407, provided the report meets the requirements specified in § 180.417(b).

Section 180.417(b)(1)(viii)

Q89. Do repair facilities need to keep a final copy of tests and inspection papers with the customer's signature and date of signature?

A89. This paragraph does not require repair facilities to retain copies of post-repair tests and inspections, but RSPA considers this to be a good business practice (see § 180.417(a)(1)).

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H.R. 2074/P.L. 103–101

To authorize appropriations for the American Folklife Center for fiscal years 1994 and 1995. (Oct. 8, 1993; 107 Stat. 1020; 1 page)

H.R. 3051/P.L. 103–102

To provide that certain property located in the State of Oklahoma owned by an Indian housing authority for the purpose of providing low-income housing shall be treated as Federal property under the Act of September 30, 1950 (Public Law 874, 81st Congress). (Oct. 8, 1993; 107 Stat. 1021; 1 page)

S. 1130/P.L. 103–103

Federal Employees Leave Sharing Amendments Act of 1993 (Oct. 8, 1993; 107 Stat. 1022; 3 pages)

H.R. 38/P.L. 103–104

To establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes. (Oct. 12, 1993; 107 Stat. 1025; 5 pages)

H.R. 2608/P.L. 103–105

To provide for the reauthorization of the collection and publication of quarterly financial statistics by the Secretary of Commerce through fiscal year 1998, and for other purposes. (Oct. 12, 1993; 107 Stat. 1030; 1 page)

S. 1381/P.L. 103–106

National Forest Foundation Act Amendment Act of 1993 (Oct. 12, 1993; 107 Stat. 1031; 2 pages)

S.J. Res. 102/P.L. 103–107

To designate the months of October 1993 and October 1994 as "Country Music Month". (Oct. 12, 1993; 107 Stat. 1033; 1 page)

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